S. HRG. 100-239

INDIAN DEVELOPMENT FINANCE CORPORATION ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 721

TO PROVIDE FOR AND PROMOTE THE ECONOMIC DEVELOPMENT OF INDIAN TRIBES BY FURNISHING THE NECESSARY CAPITAL, FINANCIAL SERVICES, AND TECHNICAL ASSISTANCE TO INDIAN OWNED BUSINESS ENTERPRISES AND TO STIMULATE THE DEVELOPMENT OF THE PRIVATE SECTOR OF INDIAN TRIBAL ECONOMIES

APRIL 30, 1987
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INDIAN DEVELOPMENT FINANCE CORPORATION ACT

THURSDAY, APRIL 30, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee, met, pursuant to notice, at 9:23 a.m., in room 628, Dirksen Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I would like to welcome all of you to this hearing on S. 721, the Indian Development Finance Corporation Act. This hearing is the second in a series on this bill, and is intended to provide an opportunity for representatives of the financial world to discuss the proposed corporation.

This bill establishes a federally-chartered corporation designed to meet the unique and distinctive needs of Indian business development by acting as a mediator between established sources of private capital and Indian owned business enterprises.

On April 9 of this year this committee held a hearing to examine the general economic development conditions across Indian country. It was pointed out at that hearing that severe unemployment problems continued to persist, and in many respects the economic conditions of Indian people continues to get worse rather than better.

One factor essential to improving these conditions, but which is generally not available anywhere in the private sector for Indian business and investment, is start-up capital. This proposal is intended to meet this crucial need by providing investment capital through the Development Finance Corporation. However, it must be met in a way which is effective and represents the level of discipline necessary in the private sector.

Consequently, we have asked representatives from private financing firms to discuss this proposal. We will be happy to consider any changes which may be recommended to enable the Corporation to relate to the private sector in a productive manner.

[The text of S. 721 follows:]

II

100TH CONGRESS
1ST SESSION

S. 721

To provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 1987

Mr. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Development Finance Corporation Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) a special relationship has existed between the United States and the Indian tribes which is recognized in clause 3, section 8, article I of the United States Constitution,

(2) Congress, through statutes, treaties and the exercise of administrative authorities, has implemented the Federal Government's responsibility for the protection and preservation of Indian tribes and their resources,

(3) despite the availability of abundant, natural resources on Indian lands and a rich, cultural legacy which places great value on self-determination, self-reliance and independence, American Indians and Alaskan Natives experience poverty and unemployment along with the associated incidences of social pathology, to an extent unequaled by any other group in America,

(4) the reasons for such unparalleled poverty and unemployment have been widely studied and documented by the Congress, the General Accounting Office, the United States Department of the Interior, private academic institutions and the Indian tribes themselves and that such studies have consistently identified as fundamental obstacles to balanced economic growth and progress—

(A) the very limited availability of long term development capital and sources of financial credit necessary to support the development of a private sector economy in Indian country comprised of Indian owned business enterprises,

(B) the lack of effective control by the Indians over their own lands and resources, and

(C) the scarcity of experienced Indian managers and technicians,

(5) previous efforts of the Federal Government directed at stimulating Indian economic development through the provision of grants, direct loans, loan guarantees, and interest subsidies have fallen far short of their objectives due to—

(A) inadequate funds,

(B) lack of coordination,

(C) arbitrary project selection criteria,

(D) politicalization of the delivery system, and

(E) other inefficiencies characteristic of a system of publicly administered financial intermediation, and

(6) the experience acquired by multilateral lending institutions among the so-called lesser developed countries has demonstrated the value and necessity of de-

velopment financing institutions in achieving economic growth in underdeveloped economies and societies which are strikingly similar to Indian and Alaskan Native communities in relation to such matters as control over natural resource management and the absence of experienced, indigenous managers and technicians, as well as the availability of long term development capital and private sources of financial credit.

(b) It is hereby declared to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to the Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment and achieve lasting economic self-sufficiency through the development of the private sector of tribal economies by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and technical assistance utilizing the proven efficiencies of the private market mode of operation.

DEFINITIONS

SEC. 3. (a) For purposes of this Act—

(1) The term "Indian" means any person who is a member of any Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) which is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) The term "reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act).

(4) The term "tribal organization" means the governing body of any Indian tribe or any entity established, controlled, or owned by such governing body.

(5) The term "Indian business enterprise" means any commercial, industrial or business activity—

(A) which is operated for profit,

(B) at least 51 percent of which is owned by Indians or Indian tribes,

(C) which produces or furnishes goods, services, or facilities,

(D) which—

(i) owns at least one share of voting common stock of the Corporation,

(ii) will acquire at least one share of such stock as part of any transaction involving services provided by the Corporation under subsection (b), (c), or (d) of section 102, or

(iii) is owned, chartered, or controlled by any Indian tribe or tribal organization which owns at least one share of such stock, and

(E) whose—

(i) principal place of business is located within the boundaries of an Indian reservation, or

(ii) principal business activities are determined by the Corporation to be directed at contributing to the economy of any Indian tribe.

Such term includes any entity which is wholly owned or controlled by any commercial, industrial or business activity described in the preceding sentence.

(6) The term "Corporation" means the Indian Development Finance Corporation established under section 101(a).

(7) The term "Secretary" means the Secretary of the Interior.

TITLE I—ESTABLISHMENT OF CORPORATION

CREATION

SEC. 101. (a) There is hereby established the Indian Development Finance Corporation.

(b) The Corporation shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of the Corporation.

(c) The principal office of the Corporation shall be in the District of Columbia and, for purposes of venue, the Corporation shall be treated as a resident of the District of Columbia.

FUNCTIONS

SEC. 102. (a) It shall be the duty of the Corporation to—

(1) provide development capital through the financial services that the Corporation is authorized to provide under subsections (b), (c), and (d);

(2) encourage the development of new and existing Indian business enterprises eligible for its assistance by providing and coordinating the availability of—

(A) long term capital and working capital,

(B) loans, loan guarantees and other forms of specialized credit, and

(C) technical and managerial assistance and training;

(3) maintain broad based control of the Corporation in its voting stockholders;

(4) encourage active participation in the Corporation by Indian Tribes and individuals by ownership of its equity securities;

(5) assist in strengthening the private sector of Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies.

(b)(1) The Corporation may—

(A) make loans or commitments for loans to any Indian business enterprise, or

(B) purchase or discount any obligations of an Indian business enterprise,

if such enterprise meets the requirements of paragraph (2).

(2) An Indian business enterprise meets the requirements of this paragraph if the Corporation makes an independent determination that—

(A) such enterprise has or will have—

(i) a sound organizational and financial structure,

(ii) income in excess of its operating costs,

(iii) assets in excess of its obligations, and

(iv) a reasonable expectation of a continuing demand for—

(I) its production, goods, commodities, or services, or

(II) its facilities, and

(B) the loan or obligation of such enterprise will be fully repayable in accordance with the terms and conditions of such loan or obligation.

(3)(A) Loans made by the Corporation under this subsection shall be—

(i) repayable in not more than 40 years after the date on which such loan is made, and

(ii) in the case of a loan repayable in more than 5 years, amortized with regard to both principal and interest.

(B) In setting the terms, rates, and charges for loans made under this subsection the objective of the Corporation shall be to provide the type of credit needed by Indian business enterprises at the lowest reasonable cost and on a sound business basis, taking into account—

(i) the cost of money to the Corporation,

(ii) the necessary reserve and expenses of the Corporation, and

(iii) the technical and other assistance attributable to loans made available by the Corporation under this subsection.

(C) The terms of any loan made under this subsection may provide for interest rates which vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Corporation for new loans at such times.

(4) The proceeds of a loan made under this subsection may be advanced by the borrower to its members or stockholders under circumstances permitted under the bylaws or rules of the Corporation.

(c)(1) The Corporation may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any Indian business enterprise if—

(A) such loan is to an Indian business enterprise that meets the requirements of subsection (b)(2), and

(B) such loan was made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation.

(2) The Corporation may impose a charge for any loan guarantee made under this subsection.

(3) No loan may be guaranteed by the Corporation under this subsection if the income from such loan to the lender is excludable from such lender's gross income for purposes of chapter 1 of the Internal Revenue Code of 1986.

(4) Any loan guarantee made under this subsection shall be assignable to the extent provided in the contract of guarantee entered into by the Corporation.

(5) Any guarantee made under this subsection shall be uncontestable, except in the case of fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan.

(6) The Corporation, in lieu of requiring the original lender to service a loan guaranteed under this subsection until final maturity or liquidation, may purchase such guaranteed loan for an amount equal to the balance of the principal and the amount of interest accrued thereon without penalty if the Corporation determines that—

(A) the liquidation of such guaranteed loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation,

(B) such guaranteed loan will be repayable with revision of the loan rates, terms, payment periods, or other conditions consistent with loans made by the Corporation under subsection (b), and

(C) the lender or other holder of such guaranteed loan is unwilling to make such revision.

(d)(1) For purposes of providing long-term capital and working capital to Indian business enterprises, the Corporation is authorized to purchase, or make commitments to purchase, up to 25 percent of the equity or ownership interest in any Indian business enterprise if the Corporation determines, after a full and complete appraisal of all project and business plans associated with the investment taking into account the criteria set forth in subsection (b)(2) that such an investment does not expose the Corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development (or, in light of the socio-economic, political and legal conditions unique to Indian reservations).

(2) The Corporation is also authorized to supervise or participate in the management of Indian business enterprises in which an investment has been made under paragraph (1) according to such terms and conditions as are agreed to by the Corporation and principals of the enterprise, including the assumption of a directorship in the corporate body of such Indian business enterprise by an officer of the Corporation.

GENERAL POWERS

SEC. 103. In carrying out the provisions of this Act, the Corporation shall have the power, consistent with the provisions of this Act—

(1) to adopt and alter a corporate seal, which shall be judicially noticed,

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code, except that the Corporation shall provide financial assistance only in accordance with this Act,

(3) to—

(A) lease, purchase, accept gifts or donations of, or otherwise to acquire,

(B) own, hold, improve, use, or otherwise deal in or with, and

(C) sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of,

any property, real, personal, or mixed, or any interest therein,

(4) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction,

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings,

(6) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable,

(7) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this act and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense),

(8) to use the United States mails on the same terms and conditions as the executive departments of the United States Government,

(9) to obtain insurance or make other provisions against losses,

(10) to participate with one or more other financial institutions, agencies, instrumentalities, trusts, or foundations in loans or guarantees made under this Act on terms as may be agreed upon,

(11) to accept guarantees from other agencies for which loans made by the Corporation may be eligible,

(12) to establish one or more regional offices, as may from time to time be authorized by the Board of Directors in order to more efficiently serve the widely disbursed Indian population,

(13) to buy and sell—

(A) obligations of, or instruments insured by, the United States or any agency or instrumentalities thereof, or

(B) securities backed by the full faith and credit of any such agency or instrumentality,

(14) to make such investments as may be authorized by the Board of Directors of the Corporation,

(15) to establish such offices within the Corporation as may be necessary including offices for—

(A) Project Development,

(B) Technical Assistance and Training,

(C) Project Evaluation and Auditing,

(D) Fiscal Management, and

(E) any other offices as may from time to time be authorized by the Board of Directors, and

(16) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation in order to carry out the provisions of this Act and the exercise of its powers, purposes, functions, duties, and authorized activities.

BOARD OF DIRECTORS

SEC. 104. (a) The powers of the Corporation shall be vested in the Board of Directors.

(b)(1) The Board of Directors shall consist of the following twelve members:

(A) one officer of the United States Government;

(B) six individuals who represent the Indian tribes which are shareholders in the Corporation,

(C) the President of the Corporation, and

(D) four shareholders in the Corporation who are not described in subparagraph (A), (B), or (C).

The President of the Corporation shall not be entitled to vote as a member of the Board of Directors.

(2)(A) The initial members of the Board of Directors (other than the President of the Corporation) shall be appointed by the President by and with the advice and consent of the Senate.

(B) In making appointments under subparagraph (A) and paragraph (4)(B), the President shall take into account the experience of the individual in private business enterprises and in development or commercial financing. The individuals appointed to represent Indian tribes which are shareholders shall be Indians and shall only be appointed after the President has consulted with, and received nominations from, such tribes. No more than five of the ten members of the Board of Directors described in subparagraphs (B) and (D) of paragraph (1) may be members of the same political party.

(3)(A) The term of office for initial members of the Board of Directors described in paragraph (1)(B) shall expire at the commencement of the first annual meeting of the

shareholders of the Corporation held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to Indians tribes.

(B) The term of office for initial members of the Board of Directors described in paragraph (1)(D) shall expire at the commencement of the first annual meeting of the shareholders of the Corporation held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to the public.

(C) Except as otherwise provided in this paragraph, the term of office for any members of the Board of Directors shall be 5 years.

(4)(A) Any vacancy on the Board of Directors created by the expiration of the term of office shall be filled by an individual elected by the shareholders in an election held under the bylaws of the Corporation.

(B) If a vacancy occurs on the Board of Directors prior to the expiration of the term of office to which the member was elected or appointed, the President shall appoint an individual, by and with the consent of the Senate, to fill such vacancy until the expiration of such term of office.

(5) No individual may be elected to serve more than 2 terms on the Board of Directors.

(6) A member of the Board of Directors may be removed from office by the President only for neglect of duty or malfeasance in office.

(c)(1) The Board of Directors shall establish the policies of the Corporation and shall supervise the management of the Corporation.

(2) A majority of the Board of Directors shall constitute a quorum and any action of the Board of Directors shall be effected by majority vote of all members of the Board of Directors.

(3) The Board of Directors shall annually elect from among its members a Chairman and Vice Chairman.

(4) The Board of Directors shall adopt, and may amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(5)(A) The Board of Directors shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly.

(B) Subject to such rules adopted by the Board of Directors as are necessary for the orderly conduct of business, all meetings of the Board of Directors shall be open to representatives of Indian tribes, Indian business enterprises, and Indian organizations and any individual who has an identifiable interest in the affairs of the Corporation. The Board of Directors may meet in private executive session if the matter

under discussion in such session involves any matter which may impinge on the right of privacy of any individual.

(d) Each member of the Board of Directors not otherwise employed by the Federal Government or a State government shall receive compensation at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in the actual performance of his or her duties as a member of the Board of Directors. A member of the Board of Directors who is an officer or employee of the United States Government or of a State government shall serve without additional compensation. All members of the Board of Directors shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

OFFICERS; EMPLOYEES

SEC. 105. (a) The Board of Directors shall appoint a President of the Corporation. The President of the Corporation may be removed from office by the Board of Directors in accordance with the bylaws of the Corporation.

(b) The President of the Corporation shall serve as the chief executive officer of the Corporation. Subject to the direction of the Board of Directors and the general supervision of the Chairman, the President of the Corporation shall have the responsibility for carrying out the policies and functions of

the Corporation, and shall have authority over all personnel and activities of the Corporation.

(c) The President of the Corporation, with the approval of the Board of Directors, shall have the authority to appoint and fix the compensation and duties of such officers and employees as may be necessary for the efficient administration of the Corporation. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

SEC. 106. (a) The financial disclosure provisions of the Ethics in Government Act of 1978 (92 Stat. 1824; Public Law 95-521) applicable to individuals occupying positions compensated under the Executive Schedule shall apply to the members of the Board of Directors, the officers of the Corporation and to employees of the Corporation whose position is compensated at a rate equivalent to that payable for grade GS–16 or above of the General Schedule established by chapter 53 of title 5, United States Code. The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal agency.

(b) Any provision of law governing post-Federal employment activities shall not apply to former Federal employ-

ees who may be employed by the Corporation while acting on behalf of the Corporation.

(c)(1) Except as permitted by paragraph (3), no member of the Board of Directors shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to his knowledge—

(A) such member,

(B) his spouse, child, or partner,

(C) an organization (other than the Corporation) in which he is serving as officer, director, trustee, partner, or employee, or

(D) any person or organization with whom he is negotiating, or has any arrangement concerning, prospective employment,

has a financial interest.

(2) Action by any member of the Board of Directors contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to section 104(b)(6), but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which such member participated.

(3) The prohibition contained in paragraph (1) shall not apply if the member first advises the Board of Directors of the nature of the particular matter in which he or she pro-

poses to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such member's services for the Corporation in that matter. The member involved shall not participate in such determination.

(d) Subsection (a) of section 207 of title 18, United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former members of the Board of Directors, officers, and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government. Such section shall apply to the Corporation as if it were an agency of the executive branch of the United States Government.

ANNUAL MEETINGS

SEC. 107. (a) The Corporation shall hold an annual meeting of its shareholders which shall be open to the public. At such meeting, the Corporation shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to shareholders and Indian business enterprises eligible for services from the Corporation.

(b) Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting of shareholders relating to matters within the scope

of this Act and may participate in the discussion thereof and other matters on the agenda of such meeting.

(c) At least 30 days notice of the time and place of the annual meeting required under subsection (a) shall be given to all shareholders.

TAX STATUS

SEC. 108. (a) The Corporation, its franchise, capital, reserves, surplus, income, and intangible property shall be exempt from all taxation now or hereafter imposed by the United States, or by any State, county, municipality, Indian tribe, or local taxing authority, except that—

(1) any real property owned in fee by the Corporation shall be subject to State, territorial, county, municipal, tribal, or other local taxation to the same extent, according to its value, as other similarly situated and used real property without discrimination in the valuation, classification, or assessment thereof;

(2) the Corporation and its employees shall be subject to any nondiscriminatory payroll and employment taxes intended to finance benefits based upon employment.

(b) Any bond, note, or other evidence of indebtedness issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the

United States, by any territory thereof, or by any State, county, municipality, Indian tribe, or local taxing authority.

REPORTS TO CONGRESS

SEC. 109. The Board of Directors of the Corporation shall report annually to the appropriate committees of the Congress on the Corporation's capital, operations, and financial condition. Such report shall include recommendations for legislation needed to improve the services of the Corporation.

CONFORMING AMENDMENTS

SEC. 110. (a) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) the Indian Development Finance Corporation.".

(b) Paragraph (3) of section 9107(c) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(c) Paragraph (2) of section 9108(d) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"President, Indian Development Finance Corporation.".

TITLE II—CAPITALIZATION

ISSUANCE OF STOCK

SEC. 201. (a)(1) The Corporation is authorized to issue shares of stock in the Corporation in an amount determined by the Board of Directors.

(2) The Corporation is authorized to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

(b)(1) At least 60 percent of the voting common stock issued by the Corporation which is outstanding at any time shall be owned by Indian tribes and the alienation of such stock shall be limited to sales to other Indian tribes or to the Corporation. The remaining 40 percent of the voting common stock issued by the corporation shall be available for purchase by the public.

(2) Subject to the restrictions imposed under paragraph (1), the Corporation may issue shares of stock in such classes having such rights and privileges as the bylaws shall prescribe.

(3)(A) No person or Indian tribe may own more than 5 percent of the total value of all outstanding voting common stock of the Corporation at any time.

(B) The restrictions imposed under subparagraph (A) shall not apply with respect to stock issued under subsection

(c) or (d) and such stock shall not be taken into account under subparagraph (A).

(c)(1) The Corporation shall offer a total of 100,000 shares of common stock of the Corporation for sale at $250 per share to Indian tribes. The number of such shares of stock available for purchase by each Indian tribe shall be determined on the basis of an equitable formula established by the Board of Directors.

(2)(A) The Corporation shall offer a total of 100,000 shares of common stock of the Corporation for sale at $250 per share to the United States for the benefit of Indian tribes.

(B) The Secretary shall purchase for the benefit of any Indian tribe the number of shares of stock offered under subparagraph (A) which is equal to the number of shares of stock purchased by such tribe under the offer made under paragraph (1).

(3) The offers made under paragraphs (1) and (2) shall remain open until the date which is 5 years after the date on which such offer is initially made.

(d)(1) At any time after the date which is one year after the date on which the offer is initially made under subsection (c)(1), the Corporation shall offer 80,000 shares of preferred stock of the Corporation for sale to the United States at $500 per share.

(2) The offer made under paragraph (1) shall remain open until the date which is 5 years after the date on which such offer is initially made.

(3) The Secretary shall purchase 40,000 shares of stock offered for sale under paragraph (1) by the date which is 2 years after the date on which such offer is initially made and shall purchase the remaining shares of stock so offered by the date which is 3 years after the date on which such offer is initially made. Such stock shall be held by the Secretary until such time as the Corporation offers to redeem such stock at $500 per share.

(4) The preferred stock offered for sale under paragraph (1) shall be nonvoting stock having a right of first preference to the assets of the Corporation over all other stock issued by the Corporation.

(e)(1) Notwithstanding any other provision of law, the Secretary shall use any funds held by the Secretary in trust for the benefit of an Indian tribe to purchase such number of shares of stock in the Corporation as the governing body of the tribe may request the Secretary to purchase on behalf of the tribe.

(2) Any share of stock purchased by the Secretary under paragraph (1) with the trust funds of any Indian tribe shall be held in trust by the Secretary for the benefit of the tribe and

shall be voted by the Secretary in accordance with the directions of the governing body of the tribe.

(3) In purchasing shares of stock for the benefit of any Indian tribe under paragraph (1), the Secretary shall first purchase any shares of stock which are offered to such Indian tribe under subsection (c)(1).

(4)(A) The Secretary shall sell or exchange any shares of stock purchased under paragraph (1) upon the request of the governing body of the Indian tribe on whose behalf such shares were purchased.

(B) In the case of a sale or exchange of any shares of stock purchased under paragraph (1) for the benefit of any Indian tribe, the Secretary of the Treasury shall pay to the Secretary for the benefit of such tribe, out of funds in the Treasury not otherwise appropriated, an amount equal to the excess of—

(i) the amount of trust funds of such tribe which were used to purchase such shares of stock, over

(ii) the sum of—

(I) cash, plus

(II) the fair market value of any property,

received by the Secretary in such sale or exchange.

(C) If—

(i) the governing body of the Indian tribe on whose behalf any shares of stock were purchased under

paragraph (1) requests the Secretary to sell or exchange such shares, and

(ii) the Secretary is unable to sell or exchange such shares,

the Secretary of the Treasury shall pay to the Secretary for the benefit of such tribe, out of funds in the Treasury not otherwise appropriated, an amount equal to the trust funds of such tribe which were used to purchase such shares.

(D) Any amount paid by the Secretary of the Treasury under subparagraph (B) shall become a noninterest-bearing obligation of the Corporation to the United States.

(E) Upon making any payment under subparagraph (C) with respect to shares of stock—

(i) the Secretary of the Treasury shall succeed to all rights of ownership in such shares, and

(ii) the excess of—

(I) the amount of such payment, over

(II) the fair market value of such shares of stock at the time of such payment,

shall become a noninterest-bearing obligation of the Corporation to the United States.

(F) For purposes of this paragraph, the term "sale or exchange of stock" includes the redemption or repurchase of stock by the Corporation.

(f) The stock or other securities or instruments issued by the Corporation shall, to the same extent as securities which are the direct obligations of the United States, be "exempted securities" within the meaning of the laws administered by the Securities and Exchange Commission.

BORROWING AUTHORITY

SEC. 202. (a)(1) The Corporation is authorized to issue bonds, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board of Directors shall determine after consultation with the Secretary of the Treasury.

(2) The aggregate amount of obligations issued under paragraph (1) shall not exceed an amount equal to the product of—

(A) 10, multiplied by

(B) the sum of—

(i) the paid-in capital of the Corporation, plus

(ii) earnings and profits of the Corporation.

(3) An obligation issued under paragraph (1) may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or such other means as may be appropriate.

(b)(1) Until the later of—

(A) the date on which the Secretary of the Treasury determines that evidences of indebtedness issued by the Corporation may be readily sold on the open market at prevailing rates of interest and yield, or

(B) the date which is 20 years after the date of enactment of this Act,

the Corporation may issue bonds, rates and other evidences of indebtedness which are fully and unconditionally guaranteed as to principal and interest by the United States.

(2) The aggregate amount of obligations issued under paragraph (1) which may be outstanding at any time shall not exceed $50,000,000.

(3) An obligation may be issued under paragraph (1) only if the Secretary of the Treasury approves of the terms and conditions of such obligation.

(4) Any obligation issued under paragraph (1) shall be considered to be a lawful investment, and may be accepted as valid security, for all fiduciary, trust, and public funds.

(5) If the Corporation is unable to pay the principal or interest due on any obligation issued under paragraph (1), the Secretary of the Treasury shall pay the amount due on such obligation out of funds in the Treasury not otherwise appropriated. Any amount paid by the Secretary of the Treasury under the preceding sentence shall become an obligation of the Corporation to the United States that—

(A) bears interest at the same rate borne by the obligation with respect to which such payment was made, and

(B) is payable under the same terms.

(c)(1) The Secretary shall enter into an agreement with the Corporation under which the United States shall loan $35,000,000 to the Corporation for the purpose of providing initial operating funds and of enhancing the ability of the Corporation to provide financial services under subsections (b), (c), and (d) of section 102.

(2) The terms of the loan agreement entered into under paragraph (1) shall provide—

(A) for a repayment period of at least 40 years at a rate of interest not to exceed 100.5 percent of the average rate of interest on 7-year Treasury bills of the United States,

(B) for suspension of payment of the interest and principal during the 10-year period beginning on the date such agreement is executed, and

(C) such other terms and conditions upon which the Secretary of the Treasury and the Corporation may agree.

(3) The proceeds of the loan made under paragraph (1) shall be made available to the Corporation upon execution of the loan agreement and such proceeds shall be invested by

the Corporation in any obligations issued by the United States which are fully and unconditionally guaranteed as to principal and interest by the United States. Any interest or income derived from such obligations may be used by the Corporation in providing financial services under subsections (b), (c), and (d) of section 102 or paying operational expenses of the Corporation.

(d)(1) In addition to the loan made under subsection (c) and any guarantees made under subsection (b), the Secretary of the Treasury may purchase any obligations issued by the Corporation under subsection (a) if the Secretary of the Interior holds shares of stock of such Corporation under section 201(d) at the time of such purchase.

(2) No obligation may be purchased by the Secretary of the Treasury under paragraph (1) if the rate of return on such obligation is less than the average rate of return being offered on the date of such purchase on Treasury obligations of comparable maturity.

(3) The Secretary of the Treasury may sell, upon such terms and conditions and at such price as he shall determine, any of the obligations of the Corporation acquired by him under paragraph (1).

TITLE III—AUTHORIZATION OF APPROPRIATIONS

GENERAL OPERATIONAL EXPENSES

SEC. 301. In addition to amounts authorized to be appropriated under section 302, there are authorized to be appropriated for the purpose of carrying out the provisions of this Act, $2,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989 and 1990.

AUTHORIZATIONS FOR SPECIFIC PROVISIONS

SEC. 302. (a) There are authorized to be appropriated for fiscal year 1988, $25,000,000 for the purpose of carrying out the provisions of section 201(c)(2). Such sum shall remain available until the close of the first fiscal year ending on a date that is more than 5 years after the date on which the offer is initially made under section 201(c)(1).

(b) There are authorized to be appropriated for the purpose of carrying out the provisions of section 201(d)(3) $20,000,000 for the first fiscal year beginning after the date an offer is initially made under section 201(d)(1) and $20,000,000 for the succeeding fiscal year.

(c) There are authorized to be appropriated for fiscal year 1988, $35,000,000 for the purpose of carrying out the provisions of section 202(c).

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The CHAIRMAN. This morning we are most honored and most privileged to have with us a very distinguished member of the U.S. Senate, the distinguished senior Senator from the State of New Mexico, my dear friend, Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman and members of the committee, and Senator DeConcini.

Mr. Chairman, first let me say to you personally, I compliment you. With all of the work that you have, and all of the other activities that you could clearly use your time any energy on, you have chosen to undertake the chairmanship of this committee. I know from personal comments with you that you take it very seriously and have assumed it as a major challenge. For that, I truly am grateful.

It isn't commonly known that my State has a higher percentage of Indian population than any State in the Union. That doesn't mean we have more Indian people, but we have a higher percentage. I know my friend, the Senator from Arizona, was smiling. He has more in numbers, but I'm smaller. I have almost 10 percent of the Indian population.

As a matter of fact, Mr. Chairman, not only do we have one-third of the Navajo Nation—that is the largest group of Indian people in America. Most live in Arizona. But in addition to that, we have 19 different Indian Pueblos and 3 Indian tribes in our State. Since you are now becoming familiar with the trusteeship notion, the sovereignty notion, the independence of the tribal government, we have—for example, when our Governor, the Governor of the State of New Mexico was sworn in this year, he had present 16 other governors. In a very real sense, they have a degree of autonomy and are indeed governors.

Rather than use this prepared statement, I am just going to submit it. If it is relevant, your staff can look at it.

The CHAIRMAN. Without objection, your written statement will appear at the conclusion of your oral remarks.

Senator DOMENICI. I just want to talk with you a little bit about my experience and what I see out there.

First of all, we invite you to attend what we think will be an historic event in the United States with reference to Indian economic development. The Navajo Nation—and you are aware that that is the largest group of Indian people in America, and in comparison to many others it is almost like a State in size. It has all kinds and all varieties of topography, demography, archeology. It has minerals, all the way from uranium to oil, gas, and coal.

Their chairman, at my suggestion, has decided to hold a day-long economic summit. We think it will be on a Saturday. We will invite the governors from the surrounding States. The Senators who represent the Navajo Nation will be invited. Looking at it one way, it's four Senators. Looking at it another way, it's really six.

We will invite the U.S. representatives from the area and major American corporations. We are going to sit down for a day. The reason for this summit is because the chairman of the Navajo

Nation, apparently with at least the current approval of the council, has decided to make a major effort to bring private sector development to the Navajo Nation.

In this instance I want to stress that our goal is, what do we do to bring private sector jobs to the Navajo Nation. We think that there are many things that the Indian people have to do—and they can make their own decision—with reference to changing their ways and their rules and their regulations regarding private sector development.

We think we may come up with a number of suggestions for the National Congress with reference to it. But basically, if that Navajo Nation makes a commitment that they want private sector development, we should participate.

Mr. Chairman, frankly, I believe that we have to distinguish, as we look at legislation, between two kinds of job producing entities, forgetting for a moment the Federal Government and programs like the Job Training Partnership Act which are public type jobs. But there are two distinct ways for the Indian people to bring jobs.

One has been the area where they have been struggling most and trying and failing. That is, tribally owned businesses. We have a couple of successes. I am sure Senator DeConcini could cite a couple of such successes on the Navajo Nation, although they are very few.

But we have, for instance, the Inn of the Mountain Gods on the Mescalero Apache Reservation. Through grants and loans up front, we now have a major regional tourist center. They own it, they run it. I think it took them about 10 years, from the time it was built to learn how to run it as a business. I think the history would reveal, had the Government not been there regularly with subsidized loans and additional grants, it probably would have failed before it go to be a success. But it is a success.

They have linked a ski run into it. This is an example of one kind of approach. The tribal government owns it. We don't want to be part of saying, this won't work and we don't want more of it. But I can tell you, based upon representing our Indian people for 14 years and with all the different entities I've described—I have a total of 22 tribes—that tribally run businesses are probably the most difficult way to bring economic development to the Indian nation.

Why? Well, Mr. Chairman, the reason I say that is that American business does not run two ways. American business runs one way. It runs as a business. Decisions are made by businessmen or boards of directors, exclusively aimed at that business activity. What do we do to make it succeed?

Ultimately, there is only one measure of success: you make profit and pay wages or you close down. When you get tribal government in that kind of a business, you have a very, very serious additional problem that is not there mormally. You have a tribal government, which is a political institution, trying to run a business in an American system, which is a free enterprise system.

So the confusion that comes from tribal government trying to compete with the private sector makes it very difficult for them to succeed. Obviously there are a lot of other reasons. They need technical assistance. We have had a loan program and a grant program

in effect. Much of it went to tribal-type governments. When the President had this commission appointed to look at it and see what is going on out there, they did arrive at one conclusion which I think is very relevant.

If you intend to have the Bureau of Indian Affairs involved in this corporate entity that is going to help with financing, they found that the BIA did a very bad job in terms of technical assistance to private sector businesses. I think they would do an equally bad job with technical assistance to tribal governments.

As a matter of fact, the conclusion in that report is that most of the money that was spent was spent by the BIA within its own bureaucracy. I think it is pretty obvious why. They don't know how to run businesses either. They have never been in business. What do they know about business? They are Government employees.

The U.S. Government has few businesses that run successfully. Yet, we are asking tribal government to run businesses. I think it is going to be very difficult for there to be huge success in putting our Indian people to work if we do not expand the concept well beyond tribally owned businesses.

I am not adverse to us trying to help them do it. Clearly, there are a few success stories. I encourage this committee to look at these success stories. Let me tell you about another success in New Mexico.

The Laguna Indian Tribe has had success in the past because of uranium. They have some money. Nonetheless, it took 2 years of discussion to get that tribal government to understand that if they want to set up a business and get Government contracts for defense, that they were going to have to set up a business, and that the business was going to have to be as separated from the tribal government as possible or it would never work.

They can't make tribal decisions while running a business. They have to make business decisions. They did that. They set up another corporation for profit. In its final essence, if that council decides to liquidate, they are the bosses. But what they essentially did was set up a corporate entity. Then we did get, for 2 years, Mr. Chairman, through appropriations a "Buy Indian" provision for the Department of Defense. This provision is expired now. We had that particular Laguna plant in mind, and it did work.

They had another major, major helper. I offer this suggestion to you because it might be a clue. The Raytheon Corporation, for some reason, took a genuine corporate interest in helping them. As a matter of fact, right at the top of Raytheon, they directed that executives help them set up that corporation and then gave them advice on how to run it as a business.

Then, with "Buy Indian" language, they got a major contract to assemble a large remote communications component that they then shipped elsewhere for the Defense Department. But they are constantly reminded that they have got to run it like a business even though there is a dotted line to the council, who could in essence hire its board of directors.

But it is very close to being a private sector company that does its bookkeeping, its assets, its payouts and all the others, like business people do, and they are succeeding. They are about to get another contract.

Just in that success story, there are a number of things that are pretty obvious. If you would not have had Raytheon involved they probably would have failed. If you didn't have the "Buy Indian" provision to get them started it probably would have never gotten off the ground.

But I also think had they not decided unequivocally to set up a business and let it be run like a business, it would have failed. Mr. Chairman, I actually believe that while it is up to each Indian group in our country, I believe that ultimately the success in job creation will be not to try to create a new and different mode of doing business, but rather to invite the typical business of America to Indian country.

If you want to have some Indian owned companies, they ought to be individually Indian owned, not tribally owned. You get into the problem of not knowing how to run them if they are tribally owned. I don't say this with any disparaging notions about tribal government. I hope our Indian people don't read that into the record.

We, the U.S. Congress, very seldom set up a corporation that is our creature that succeeds in this capitalistic system. If we do, they are very unique, like Amtrak. There is nobody else around to furnish this railroad service.

But just think around. Where do we have any others that have succeeded? We tried the Synthetic Fuels Corporation. That was ours. We didn't even want to make money at it, and it failed because it got into all kinds of conflicts with the private sector and salaries. Should the people that run it make more than Senators? You are going to have the same kinds of continuing problems unless you begin to concentrate on privately owned, be it Indian or non-Indian, companies coming to the reservations and pueblos and hiring the Indian people.

So whatever you do with this bank or corporation, you clearly have to make sure that it is going to be available to private sector companies who are indeed enticed by the Indian people and want it on the reservation.

Mr. Chairman, there is no question that in many cases, the private sector does not want to come to Indian country because they are fearful that there is not continuity and consistency about treatment after they are there. We started the discussion about autonomy of the Indian tribe and the Indian reservation and the Indian entity. That means autonomy to tax. That means autonomy with reference to rules and regulations.

You need not go beyond what is already going through your head. Clearly, if you have two opportunities, one right next door to Indian country and one right on Indian country, without some incentive or some desire to be altruistic, it would appear that you would probably choose a state instead of an Indian territory because at least there is the continuity of everybody in the state having to be treated the same under state government. But each Indian group has its own authority to treat business within its reservations in the same way.

I am not suggesting we have a solution to that. We wouldn't want to take away their authority. It has just been granted by interpretation of the Supreme Court. They have taxing authority and

other things. Nonetheless, we have to be realistic that they are going to have to offer something as stable as the environment around them, or what reason is there to move there.

They have to make money on the Indian reservation or they won't move there. We are not engaged in an American capitalistic system in altruism in terms of opening a branch business of Fairchild somewhere in Arizona to hire Indians. They are going to go there because it is a good working environment, or they are not going to go there. It has to be a business environment, or they are not going to go there.

Mr. Chairman, the problem is difficult. I regret to tell you that it appears to be large in size, but it is actually small in size. We talk about unemployment in America and we talk in millions when we have 8 or 10 percent unemployment. If we would succeed in putting 200,000 Indian people, men and women, to work in the United States—not 2 million, 200,000—in the next 4 or 5 years, we would dramatically reduce the unemployment.

So it is not as if challenge is one of these huge major challenges in terms of finding new jobs. It's a very small one. The problem has got to be something else or the problem would not be that severe.

It is the conflict between the environment that the private sector finds outside the reservation and the environment on it. The environment in the broad sense of the word, not clean air or clear water. But business environment. Examples are just abundant.

How do you mortgage a $10 million plant on Indian land today? How do you build a subdivision where the 200 people in a plant that are now going to make a good living can buy a house? It is as fundamental as that. There is no way on Navajo country yet, to my knowledge—I believe my friend from Arizona can agree with this—There is no way that if a major plant employs 750 people with good jobs, that if those Navajo people wanted to live on the Navajo reservation, that they can go buy an FHA funded privately owned house in any subdivision on the Navajo Nation.

So just that kind of thing is extremely different environmentally, businesswise, than anywhere else in the country. We have begun to provide some housing, Senator, I think by long term leases. But clearly you can't convey the fee simple title to a mortgage company. So Jim Jones and his wife, who are Navajo, can't go and say, this is a lot I want to buy, I want to own my own equity and I will arrange my own mortgage.

It seems to me at the Navajo summit, we are going to discuss that issue. Would the Navajo people like to consider some kind of subdivisions around plants, maybe 100-year leases since we can't convey their fee title, and get the private financing mechanisms onto the reservations just for the homes they might want to live in if they get good solid jobs and can qualify.

There are some who would follow right up behind this, Senator, and say, who is worried about housing when they are not making enough money to buy houses. I understand, but I don't think we're meeting here hoping we're going to have that status quo after we put in motion some incentives to change the situation.

So we have to be realistic. If we change the situation, are our Navajo people, speaking of them, going to travel 300 miles everyday to go to work? I don't know. I think they would rather have a

house within a reasonable distance, like everybody other human being. They use automobiles. It's not as if they don't have cars and trucks.

So what I have done in my statement is merely point up to you some successes and failures. I have given you in my own way today some of the perceptions that I have. I want to close by saying I am in no way suggesting that we want to force private sector development on the Indian people or their leaders. I am in no way suggesting that we want to significantly change the trustee situation with reference to their land by any kind of mandate or fiat.

But I am suggesting that I think we can talk all we want for the days that you are here with your commitment as chairman, and for as long as Senator DeConcini is going to be here and Senator Domenici, we can talk about the situation. But unless and until we are committed to the fact that there are not two kinds of jobs in the private sector in America, there is only one kind, they all have to produce profit for somebody or they don't exist. And for the most part, with very few exceptions, that entity called a business has to be competitive with someone. No one is going to buy a product unless it is done well and competitive in price.

Those are just the realities of the hundreds of millions of businesses that exist in the United States, and they will not be two kinds. They will be run that way or they will not exist. They may exist for 3, 4, or 5 years, under subsidy or under extremely low loan interest rates. But sooner or later, they will be in competition.

I suggest that those basic principles be at the heart of what we're trying to do in terms of setting up an entity with resources that can be some kind of magnet or attraction, and that obviously we leave it up to the Indian people to say yes or no to what that might bring by way of changes to their culture, their lifestyle, and the like.

I did, in this statement, indicate that there is an economic development fever out there. It is bingo. You are aware of that. I think, from my standpoint obviously, it is borne of frustration. Certainly I would not like to be part of promoting bingo over other businesses, for the rest of my Senate career, that was about the best we could do.

As a matter of fact, I would think that if you were to run a quick GAO audit across the land, I think you would not find that bingo has yet yielded any significant monies to the treasuries of the particular Indian entities in this country. I would assume that we will never see the day when they would really make substantial money. There may be a few jobs. But I wouldn't be at all surprised, when you draw the cost lines and the agents that put them together and the fees off the top and all the other, that there will be very little other than the jobs that are there.

They think they are going to make an awful lot of millions going into tribal coffers. I am a doubting Thomas on that one.

Mr. Chairman, I would be pleased to answer any questions. But most of all, I thank you for your granting me this privilege, and for what you are trying to do.

The CHAIRMAN. Senator, I'd like to thank you for your very effective articulation of the necessity of applying the basic principles of free enterprise in any business endeavor if success is the goal. I am

certain all of us agree with you that whenever a central government or government entity tries to enter into a business enterprise, that government entity is taking along extra baggage called bureaucracy and patronage, among other things. When you add those two things, you have failure on the other end of the formula.

We are most grateful to you for emphasizing these points. I gather your conference will be in Shiprock, AZ?

Senator DOMENICI. Shiprock, NM.

The CHAIRMAN. On July 25?

Senator DOMENICI. July 25.

The CHAIRMAN. At the least, the relevant staff persons from this committee will be attending and participating in that conference. I will be encouraging as many members of the panel to be there on that day. It's just for 1 day?

Senator DOMENICI. Just 1 day. Mr. Chairman, we will also try to get the Secretary of the Interior and the Assistant Secretary in charge of the Bureau of Indian Affairs. We're even going to try to get Secretary Brock on Labor because we may need special job training as we move into this. So we will try to make it something meaningful.

I don't know if Senator DeConcini knows any further details, but I think 8 or 10 major American companies that might be interested are going to come there and at least openly discuss why they would or why they would not establish a business on the reservation. Is that not one aspect of what is going to occur?

Senator DECONCINI. We're working on it. We're working on the summit in Arizona.

The CHAIRMAN. Senator Evans.

Senator EVANS. I just wanted to commend my colleague, who has had a very perceptive view of budgetary matters generally and financial matters that are crucial both to the country and to his part of his State. I know he has a particularly sensitive view of the needs and I think the potential of Indian people in his State. I share with him that same concern and feeling, that if we are good enough and clever enough to come up with opportunities or legislation that will offer real opportunities with relatively few, in terms of numbers in providing jobs, we can make a dramatic difference in the well being and the future potential of all of our Indian tribes.

Senator DECONCINI. Mr. Chairman, I want to just compliment Senator Domenici also, particularly on the effort he has put forward with the chairman of the Navajo Reservation, Mr. McDonald, on the summit idea. I think it is really going to shed a lot of light.

Has the distinguished Senator from New Mexico looked at the potential cost of the legislation that is before us? I very much support Senator Inouye's principle here. I would like to know if the Senator from New Mexico has given any thought to how we would finance this?

Senator DOMENICI. I'll be absolutely honest with you, Senator. I have been tied up, as you might suspect, with a few other things. I only know some very general principles about the corporation. I have not costed it out and have not attempted to offer any specific ideas. I hope to have time to do that before you finish the mark up. And I would be more than happy to discuss with you how we might do the financing.

I understand, Senator DeConcini, that there is an interest in setting up this financing mechanism, which is sort of a quasi bank, quasi development company, in a way where equity could be obtained by the Indian people in that entity itself. Any time you can get those who are going to be users to have an equity position, if the equity position is understood as their share of any potential success, I think it is good.

I think it is far more important, however, that we try to find ways to get Indian people into business than it is to be worried about Indian equity in this particular financing institution. I think this financing kind of institution has to be set up so that it does its job. Its job is not the same kind of thing as making sure that somewhere on the Navajo Nation there are five young Navajo men or women who can own their own business.

Perhaps it is a mechanics shop, a garage and a filling station that they own. I think that is what we have to try to figure out how to do. We have been pretty good at saying, we'll let the Navajo Nation build a shopping center. Then the Navajo Nation owns it, and we have all of the problems discussed by the distinguished Chairman. It gets involved in politics, in permits, in all kinds of things.

This entity ought to be such that we find more large and small proprietary businesses out there. That is where the equity ought to come in, in my opinion. You have to try very hard to create that kind of equity.

Senator DECONCINI. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much, Senator. You have been most helpful.

Our first panel will consist of Mr. Thomas N. Tureen of Tureen & Margolin of Portland, Maine; Mr. Dennis Gibb, vice president of Bear Stearns and Company of San Francisco; and Dr. Lorraine Ruffing of the Center on Transnational Corporations of New York City.

I gather that Dr. Ruffing will be the lead witness. Welcome.

STATEMENT OF DR. LORRAINE RUFFING, CENTER ON TRANSNATIONAL CORPORATIONS, UNITED NATIONS

Dr. RUFFING. Thank you, Mr. Chairman and members of the committee. My remarks will be short and hopefully to the point.

The causes of Indian economic underdevelopment are rather well known. They have been documented by countless U.S. Government reports, starting with the Merriain Report in 1928, and ending with the current Administration's attempt. One or more of the following essential ingredients has been found to be missing: long term capital in sufficient amounts.

For example, the Indian Finance Act provides only 0.1 percent of what is needed. Moreover, it is a one shot deal with no leverage or technical assistance.

Other missing factors are control over land and resources and managerial expertise. Different reports, different people emphasize different obstacles. Since we are now relying more on the free market it is fashionable to stress management skills. But it is important not to be too simplistic.

The most fruitful approach to development is a balanced one. Most of the past failures resulted from the absence of a number of factors, since the Federal Government and Indian tribes were seldom able to draw together all the necessary ingredients.

These would include a stable business environment, where the rules of the game are clear. I believe Senator Domenici mentioned the fact that consistent treatment is needed on the Indian reservations. Other factors which are needed are adequate long term capital and short term credit, control, accountability, technical assistance, which would include project evaluation, training and management advice.

The proposal before you was put together by a group of economists, development planners, and lawyers who were well aware of the harsh economic environment on Indian reservations. We knew what the problems were and what the obstacles are, and we designed a solution over a space of 2 years. This was not a camel building exercise, but rather a serious effort to come up with a workable solution.

One institution which impressed us was the International Finance Corporation, which is part of the World Bank family. By the way, it's celebrating its 30th birthday. The International Finance Corporation has been a catalyst for private investment in developing countries since 1957. It brings together financing, technical assistance and management advice. It provides loans and equity to the private sector. It does this because the private sector can provide a thrust for economic growth that comes from no other source.

The scale of its investments are not large. But the task is to bring other investors along, and it never invests alone. During the past 30 years it has promoted 933 ventures to the tune of $33 billion. So, it is a rather solid success. In fact, the Interamerican Development Bank is in the process of setting up a separate international finance corporation for Latin America.

The IFC has become a financial innovator in these troubled times. It has encouraged debt-equity swaps in some debt-ridden countries. As you might have guessed, the Indian Development Finance Corporation shares a number of common features with the IFC.

Indian tribes are encouraged to contribute equity capital. The corporation can borrow in the private market. It will finance projects in the private sector by providing loans, co-financing and taking an equity stake. By combining capital, solid project evaluation, technical assistance in the form of management advice and training, it brings a stability to the Indian investment climate which has previously been lacking and which other institutions cannot provide.

A commercial bank cannot identify and put together projects from start to finish. It cannot give long term capital. It cannot give technical assistance in the form of training and management advice. It cannot monitor the venture closely in order to insure that all investors see a return.

The corporation will not only decrease the risk to private investors through its multi-faceted approach, but it will also provide Indian tribes with alternative and secure investment opportunities,

something they have relied on almost exclusively on the Federal Government.

I think the corporation will be a rather conservative institution in the beginning. It will start modestly. It will undertake rigorous evaluation. It will maintain a low debt/equity ratio, and will seek to attract highly qualified staff members. It will have to do these things because it will have to make a profit to survive, to grow, to prosper.

Hopefully, it will act as a catalyst for investment in Indian country and will encourage local investment. It is intended to mobilize capital, not to replace it. I might add that the proposal for the corporation is entirely consistent with recommendations for accelerating business development on some reservations such as the Navajo Nation.

Senator Domenici mentioned the planned Navajo economic summit. This is part of the current tribal strategy. Part of that strategy also aims at providing adequate sources of credit and financing for business start-ups. It is a job that the Navajo Nation can begin but cannot do alone.

They are willing to commit $4 million to an economic development fund. What if the corporation existed and they committed it to the corporation? They would receive not only a return on their funds, but also access to long term finance and a partner in development who could provide any technical assistance they neeeded.

We have learned a lot from the International Finance Corporation experience. I would like to emphasize that we are not setting up a new mode of doing business, but one that has stood the test of time. We have adapted it to the realities of the Indian reservation and community. I am confident that this committee can create a corporation which can develop into a self-sustaining institution which will be an investor, a lender, a packager, a guarantor and a broker for Indian enterprises, and will thus be capable of stimulating the private sector on Indian reservations for many years to come.

Thank you.

[Prepard statement of Dr. Ruffing appears in the appendix.]

The CHAIRMAN. I thank you very much, Dr. Ruffing.

As you may know, as chairman and ranking member of the Foreign Operations subcommittee for Appropriations, I have been very supportive of the IFC. If we can get the same type of results from this endeavor, I think all of us would be much satisfied.

I would like to note that Dr. Ruffing participated in giving birth to the concept of the idea which is contained in this bill. We thank you for that.

Dr. RUFFING. Thank you.

The CHAIRMAN. Senator Evans.

Senator EVANS. No questions.

The CHAIRMAN. Thank you very much.

Next, Mr. Gibb.

STATEMENT OF DENNIS GIBB, VICE PRESIDENT, BEAR STEARNS AND COMPANY, SAN FRANCISCO

Mr. GIBB. Thank you, Mr. Chairman.

I have already submitted testimony to your staff for your perusal.

The CHAIRMAN. Your prepared statements will appear at the conclusion of your oral statements.

Mr. GIBB. Thank you, Mr. Chairman.

The main message I would bring is; I have been involved with Indian tribes for approximately 7 years now. Over those 7 years, two things have never changed on the Indian reservation; the amount of poverty and the amount of unemployment. They go up and down but they never really change. The trend line is always the same.

I became interested in why this happened. I don't have the academic credentials of some of the people who are testifying here, but I came to a very interesting conclusion. That is that on an Indian reservation, which may have a population anywhere from 8,000 to 100,000, most of the money that comes onto the reservaton goes right back off of the reservation. It doesn't stay within the reservation boundaries.

In the legislation, it observes that Indian reservations are a great deal like LDC's, lesser developed countries. I think that is true. They suffer brain drain as the best and the brightest go away to college and come back and decide not to say on the reservation and leave for other pursuits. In addition to that, there is no economic infrastructure on the reservation. So when an Indian works at Coal Strip, Montana, or anywhere else, he brings his paycheck back to the reservation, and perhaps he deposits it in the bank.

But the checks he writes for his auto payment, for his groceries, for his clothing, go to a non-Indian business by and large. So you have an analogy of a sieve. What this means is simply this, that money which comes onto the reservation does not multiply its effect.

We take for granted when we come to work we spend our dollar, when we go down and get a sandwich, that money stays in our economy because it pays for somebody who supplies the bread and somebody who supplies the meat and somebody who supplies the mayonnaise.

You don't have that on an Indian reservation. It goes right straight off the reservation. That multiplier effect is extremely important in making an economy grow. If in an economy you only save one-half of 1 percent of each dollar, the multiplier effect of each dollar is 20. It is $1 divided by one-half of 1 percent.

That means that every $1 that come in equates to $20 in spending. It doesn't take many dollars on the reservation to make a change.

You have to tighten up that infrastructure before you start bringing a lot of money on a reservation. Otherwise all you are doing is feeding the off-reservation economy.

I particularly like two ideas in this bill. One, it requires that both tribes and the entrepreneurs become equity owners of what they're building, of their business. In the past what we tried to do was just give people money, to loan them money. Debt can be the absolute death knell of a new business. It raises the cost of doing business and makes the business not competitive.

Second, the tribes themselves did not have an interest in financing the operations. In this bill, they will have a direct interest in making sure those businesses succeed because they will have money at risk. That is what has been missing from a tribal standpoint, an at risk provision.

The private sector has always been hesitant to come onto the Indian reservation. They are still hesitant and they will probably for a long time be hesitant. The reason is that there have been too many bad experiences on reservations.

First of all, the political structure is unstable. You just get up and running and you have a political change. Second, they find today that the people on the reservation are not capable, they are not trained, they are not able to do the job. And the reason is—it's shocking to me. I don't know how to convey this very eloquently.

But it's shocking to me that there are people on the reservation who are 20 and 21 years old who have never worked. They have never ever had a job. They have no idea what it's like to bring home a paycheck. That is what private enterprise finds when they go on a reservation.

Those situations get quantified by them as a risk and as a cost of operation. So as the Senator from New Mexico observed, if you have two projects, one off the reservation and one on the reservation, the one off the reservation will get financed because the risk is less. What needs to be done is the lower the private sector's view of that risk.

The private sector will not invest unless they can do two things: quantify their costs and risks, and share their risks. If you're talking about some of these large scale coal projects, you're talking about billion dollar projects. Corporations do not own capital. To a great extent, corporations are borrowers of capital, whether they are borrowing via direct debt, or whether they are borrowing via equity in shareholding. They owe that money to other people who will cash it out if they are not confident that their money is well cared for.

No corporation is going to take a risk of putting $1 billion in capital or more onto an Indian reservation if they feel that there's too much risk. So that is why you don't get private enterprise on the reservation.

At the same time, even if you did encourage private enterprise to come on the reservation, because you have no infrastructure the money is going to go right back off the reservation to the non-reservation economy. So what you have to do with this bill is you have to encourage Indian people on the reservation to start their own businesses to capture money, to create baskets for catching money.

At the same time, you have to buy those essential businesses which are adjacent or just off the reservation which do a large portion of their business with Indians. There is no reason in the world why a car dealership off an Indian reservation should be doing $25 millon a year in business, $18 million of which is coming from the Indian reservation, and not one Indian is employed there.

There is not an Indian reservation in this country, for example, that has a car dealership on its territorial land. So all that money, the second largest purchase most of us will make is an automobile, all the service and everything else that goes with it, all that goes

off the reservation. No one on the reservation gets any training, no one gets any job experience.

Now, in the past we have tended to concentrate on large scale projects on these reservations. We have come in—and I blame private enterprise for this—with the idea that we are going to put 10,000 people to work. There probably aren't 10,000 people on a reservation who can work.

What you really need—is to give the Indians a chance to manage their own business. Most Indians have no more idea how to manage a $100 million business than they do of how to fly because they have had no experience managing a $1 million business. They have had no experience managing a $100,000 business. And until they get that experience, you are throwing money down the drain by trying to finance large scale projects. All you're going to be doing is condemning the Indian men and women to work as blue collar workers with no possibility of advancement.

What we're trying to create here, and the only way out of the problem, is for private enterprise to take over and to create people on the reservation who have experience managing business. The only way you do that is by taking those who want to start a business, funding them, helping them get their business going, monitoring them, giving them technical advice, stopping them when they do the wrong thing, patting them on the back when they do the right thing, and hoping they get a good start. You have to accept the fact that you're probably going to have a 70-percent failure rate for a while. That is probably conservative.

If we can accept those things, and if the tribes will accept that that has to be done, then there is no reason this bill could not be phenomenally successful if properly administered.

The one thing I will caution is that passing this bill is not going to do the job. What has got to happen is after this bill gets passed, you've got to sell it to the tribes. You've got to convince the tribal governments that they must invest money in this operation. It must be sold. It must be sold to the individual Indian. He must know it's there.

Many of the Indian financial assistance programs that are out there, are unknown to the Indians. Whoever gets on this corporate staff has to be constantly in a public relations blitz on Indian tribes to let them know money is available, "we can do this for you, we can do that for you". "Show these ideas to us first so that we can help you make this work".

I also think that you must desperately avoid a taint that this is another Federal project. This must look to all the world like this is a private venture capital fund which is going to dedicate itself to forstering private enterprise on Indian reservations.

That is why in my testimony I recommend not having the headquarters of the corporation in Washington, DC. I think it ought to be someplace outside of the District so it will not have the taint of being a public enterprise.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Gibb appears in the appendix.]

The CHAIRMAN. You don't think it should be in the Bureau of Indian Affairs?

Mr. GIBB. No sir; I think this should be totally outside the Government. I don't want to be derogatory to anybody here from the Bureau, but one of the jokes around the private enterprise is that you never trust the Government, because they are the ones who gave you the Post Office Department and the Bureau of Indian Affairs.

So I think you want to avoid that. You are going to want to bring in private enterprise as co-investors to some of these operations, if they feel the Government is in here they are going to want the Government to guarantee their risk, to back them up someplace.

What has got to be done is that the Government has to be willing to take a risk. I think by making it part of a Government bureau you defeat its purpose it can be nominally part of a bureau but it shouldn't be co-located with one.

The CHAIRMAN. Do you have any suggestions as to amendments to the bill, or do you support the bill in full?

Mr. GIBB. In my written testimony, Mr. Chairman, I made a couple of suggestions. There is a provision in the bill which talks about a 25-percent equity ownership being the maximum equity that the corporation can own. I believe sincerely that is probably going to end up being too low.

If you take the formulas which are used by venture capital investors in the private sector to determine the amount of equity applicable to a venture, to an equity investment or a cash investment, and adjust that for the fact that businesses here are not going to be high technology—they are not going to grow at 120 or 200 percent a year, they are going to grow at 10 percent or 20 percent or 30 percent for a while—you adjust for that risk, you are going to find that the amount of money represented by 25 percent equity in some of these businesses is going to be virtually nil. It's going to be a few thousand dollars.

In addition to that, I don't know any entrepreneurial business that has ever gone into a venture with sufficient capital on its first round, and never needed any more money. They always come back for more money. We say in the venture business when we do these sorts of things, all entrepreneurs lie because they all come to you and they tell you, I can do it. Give me $1 million and I'll give you the new IBM. How long is that going to take? It will take 2 years.

So you give them $1 million and 2 years later they are back, hat in hand, I need $5 million more because somebody invented a new semiconductor chip or the Japanese are dumping chips on me, or something. They are optimistic. They are passionate about their business and they overlook some of the downside.

What you need to do is to ensure that the corporation has the ability to step back in on the second, third, fourth round financings. Every entrepreneur makes mistakes. You must assume that in this situation the entrepreneur is going to make every mistake that he can make.

His projections are going to be wrong, his business surveys are going to be wrong. You have to be able to step back in and take more. If you limit yourself to 25 percent I think you're going to find yourself in a situation where you're not going to be able to finance and you're going to be saddling these people with a lot of debt that they don't need.

So I suggested that that be raised. I even suggested that the corporation could own a majority interest in the business which could be sold back to the entrepreneur at the cost to the corporation at a later date.

The CHAIRMAN. Would your company be willing to do business with this type of enterprise?

Mr. GIBB. I have to answer the question, probably. We would, as we do in all situations, look at each individual situation on a case by case basis. The corporation would review it, we would review it.

As far as the corporation's funding, depending upon the conditions in which the corporation was going to issue the debt portion of its financing, firms like Bear Stearns and other investment banking firms might be in a situation where we would clamor to do the business. In other climates we might not clamor to do the business.

Tax free bonds are attractive to be financed, especially if there is some implied or direct Government guarantee of payment of principle and interest. All bond investors ever want is to get paid their principle at the end of their time and get paid their interest in between. They don't care about what goes on in the meantime. What they want to know is your ability to pay.

If there is an ability, a demonstrated ability to pay, you can sell anything.

The CHAIRMAN. Thank you very much.

Mr. GIBB. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Thomas Tureen.

STATEMENT OF THOMAS N. TUREEN, ATTORNEY, TUREEN & MARGOLIN

Mr. TUREEN. Thank you, Mr. Chairman. It's a pleasure to be here.

I was introduced earlier as being from the law firm of Tureen and Margolin, and I am a partner in that law firm. Our firm specializes in Indian financial transactions. But I have really undergone something of a transformation in the last 4 years and spent almost all of my time now in my capacity as chairman of Tribal Assets Management.

Tribal Assets Management is the oldest, largest and most successful investment bank in the country which specializes in Indian transactions. It holds that distinction because it is the only one that does that. We have had an interesting experience these last few years in developing this field.

This legislation I think has the potential to have a significant impact on one of the thorniest problems that exists in Indian country today, which is the absence in virtually every reservation in the country of a self sustaining economy. This is not a problem which developed overnight. It is not one which is going to be solved overnight. It is not a simple problem.

But it is so widespread that it can only be solved, in our view, if Indian tribes can become part of the economic fabric of the regions in which they live, and if they can gain access to credit and capital from normal commercial sources.

The Federal Government can never be expected to provide enough money to bring about the kind of change which Indian tribes are clamoring for. We, for example, are in the process of closing a transaction today. The pre-closing is going on right now in Texas. The transaction involves a tribe in Arizona which involves $61 million in credit. That is as much money as the BIA has to provide in 1 year to all tribes in the United States.

There is no money involved in that transaction at all. It is being done entirely with private sources of credit and with a small amount of equity provided by the tribe. I will come back to that further on.

It illustrates the reality, which is that we simply can never expect the Government to provide enough money to make a significant impact on the problem which exists, nor can we ever expect to get from the Government or a quasi governmental entity, such as the Indian Development Finance Corporation, the kind of scrutiny and comfort which you get when a private institution or investor is risking its own money in a transaction.

That is an intangible but critically important element, we think, in this business, another reason why one can never expect these problems to get solved by Government action alone. It is equally obvious, however, that this problem is not going to get dealt with adequately, that private capital and private credit is not going to be made available to Indian tribes or brought to Indian reservations without stimulus from the Federal Government.

The Indian Development Finance Corporation can provide an important source of that Federal stimulus. It can do this especially if it is designed and focused more directly as a venture capital fund, one which is designed primarily to provide subordinate forms of credit and capital to reservations and Indian-related developments, thereby encouraging further participation by commercial credit sources.

As a result of a communication snafu, I only received your bill recently and have not had time to prepare a written statement. I may well wish to submit one after the hearing.

The CHAIRMAN. I hope you will, sir.

Mr. TUREEN. I apologize for not having had more time to review it in depth. But your trusted colleague or assistant, Mr. Parker, who is an old and close friend of mine, thought that it might be useful if I shared with you this morning some of the experience which we have had in doing some actual transactions with Indian tribes, because I think it helps to illustrate some of the kinds of things that might be done, some of the kinds of activities that might be encouraged and assisted by this new corporation.

I want to say at the outset that I think we've all got to keep a very open mind about what can and cannot work in Indian country. There have been lots of failures in the past for a variety of reasons, but when you really look at it, not a whole lot has been attempted. We find that there are potential solutions and possibilities in areas that one might not have thought possible.

My experience in Indian affairs goes back about 20 years or so. I basically spent my life representing tribes. The first half of my career as a lawyer with the Native American Rights Fund repre-

senting tribes in a series of land claims in the Eastern United States.

In Maine in 1980 the Passamaquoddy Tribe and the Penobscot Nation and the Holton Band of Maliseet Indians were awarded $81.5 million in settlement of their land claims. The tribes had the benefit of a lot of history, and they could see that other tribes who had settled claims and divided up their money amongst their members had seen that money dissipated fairly quickly, all too often without permanent results. There was a lot of hostility in Maine over the settlement.

The general feeling I think among many individuals, non-Indians, kind of a grudging acceptance of the claim and a notion that they have this money now but it won't be very long before we get it back because they're going to blow it. I think there was a real determination on the part of tribes not to have that happen, and a determination on their own part to really create a future for themselves and to change their situation.

These folks were the poorest people in the Eastern United States, east of the Mississippi, 20 years ago. They saw in the settlement an opportunity to really change their situation. I want to use them as an example because that is where we started, that is how we created tribal assets. But I want to emphasize from the outset that what I am going to be describing now is something that can only be done for tribes that have a lot of cash.

We have done transactions, as I will describe for you briefly, for very poor tribes; the Lac Du Flambeau Tribe of Lake Superior Chippewa Indians in Wisconsin is one example, and other typical tribes, such as the Eastern Band of Cherokee Indians in North Carolina or a tribe in Arizona for which we are closing this transaction right now.

The principles that we have applied I think are applicable in many places. The Passamaquoddy Tribe decided that a certain portion of its money was going to be directed toward investment. They chose a course of direct investment, directly owing businesses in the region, so that they could become a part of the economic fabric of that region.

The first thing they did was to buy a blueberry farm, for which they paid $2.2 million. That transaction involved all cash. The tribe paid all cash for this farm because in part they didn't have access to credit. It wasn't really a matter of choice. It never occurred to them because no bank had ever lent them any significant amount of money.

The experience of the Passamaquoddy Tribe, as with so many tribes in the country, borrowing for them in the past had meant putting up a certificate of deposit and having the bank lend them money against that certificate of deposit until it came due, and then the bank would exchange the CD for the loan.

Very little credit had ever been extended in Indian country. As I say, the Passamaquoddy's didn't even try to borrow when they purchased this farm. It was the third largest commercial wild blueberry farm in the State of Maine, which is a fairly significant industry in the State. The tribe did very well with it. Within 2½ years they had their entire investment back.

They were lucky. The prices were high, the weather was good, but they also managed the company well. They kept the people who had been in the company previously. It was an already existing firm. They added an Indian director to it who came in an apprentice capacity in the beginning and very quickly was able to assume leadership of the operation.

The story of their success in that business got around, and those people who had expected to see a bunch of pink Cadillacs and other failures were disappointed. Others who maybe didn't have quite so jaundiced a view I think were impressed, and attitudes started to change, in part because of the impression created by the report or by word of mouth.

The tribe itself was somewhat surprised, I've got to say, because they went into this operation with a history of failure and a fair amount of skepticism and concern themselves as to whether they could make it a success. It was a wholly owned tribal business, directly controlled by the tribe.

They had listened to everyone else who said, you can't have a tribally owned business. The politics will intrude and it won't be able to run. And son of a gun, through all those things they made it work and they made it pay off.

Having that success under their belt, they decided to go out and look for something larger because this facility, which was on their reservation—it actually became part of their reservation through the settlement—had made them a part of that outside economy. One of the problems that I think virtually all Indian tribes face is that they simply are too isolated from the rest of the economy. It is as though they were in Central America or South America or the South Pole for that matter.

They simply are not part of the fabric. When they look to do something on the reservation they invariably wind up choosing from too short a list. They choose from too short a list because they're not part of the network, be it old boy network or yuppie network, whatever it is. They are just not a part of that, so they don't see enough opportunities, they don't participate in enough conversations, they don't hear about enough things. So the list is too short and it takes a lot of sorting to come up with something good and that has a chance of making it.

The Passamaquoddy's found that by owning this business that was some distance from their basic settlement, although still on their reservation, they were getting around and becoming part of the economy. That was, they sensed, beneficial to them in ways they didn't fully understand yet.

But they went out to find something further afield and something larger, and they wound up buying one of the largest industrial facilities in the State. It was a cement manufacturing plant that had been owned by Martin Marietta, which Martin Marietta had announced it was closing because it couldn't make money with it. The people who worked there were going to be put out of work and the State was going to lose an important facility.

It had been bought by a construction company, and the tribe went to them just before they took out their permanent financing and bought it from them. That deal was done. It was a purchase and a leaseback. They leased the facility back to this company. The

BIA provided a $3 million guarantee. The tribe put up $2 million and a bank lent another $3 million. The $3 million guaranteed was lent by a bank but it was covered by the BIA.

The facility got up and operating and it did rather well. Within 1½ years the tribe restructured the transaction, took over direct operation, bought out the lease and bought out the 12 ready mix plants that this company had. It was the largest concrete dealer in the State, in addition to being the largest cement facility in the entire New England region.

They bought out all of these operations and took over direct control, again violating all the rules about mixing tribal government and politics. It was a $25.5 million transaction. The tribe already had in $2 million cash, and they borrowed the rest of the money. They gave back the BIA guarantee. The BIA had never had a guarantee given back. They didn't have a procedure for taking one back. They didn't know how to do it. It was quite complicated actually, figuring out a way to give this guarantee back.

But the tribe didn't need the guarantee anymore, unlike the entrepreneurs who come in and always lie about never needing credit again. The tribe had said in the beginning that they would never need more for this operation, and lo and behold, they didn't.

The Bank of Boston lent the money for this transaction, and the sellers held subordinate debt. The transaction was the first financing under the Indian Tax Status Act of 1982, then the one of 1984. The availability of tax exempt debt played an important part in attracting the bank and the sellers to participate in this deal.

But it involves real lending because there was limited recourse to the tribe, and the tribe only had in $2 million of cash. That transaction, I am very pleased to say, has been a real success. The Harvard Business School now uses it as a case study, not just because it was an innovative Indian deal, but because the thing has run so well. We feel that it is one of the best run cement plants in the United States and it is a tribally owned and tribally controlled venture.

It is providing significant cash. It is retiring its own cash and providing significant cash in addition to that, which the tribe is now using to develop its reservation economy. This enterprise is contributing to the tribe's reservation economy, which is the ultimate goal of this tribe as every other tribe, in two ways.

One, is providing cash. Two, it has provided them with a presence in the economy. It has made them part of that network and it has brought other ideas to them.

For example, to be specific, about 1½ years ago the tribe was contacted by the largest manufacturer of housing in Finland. The Scandinavians are significantly advanced in prefabrication of housing. This was the largest manufacturer of housing in Finland, and they wanted to put the first Scandinavian house factory into the U.S.

They read about the tribe, knew about them because of what they were doing, and contracted them to see if they wanted to invest in a new factory on Long Island. After about 1 year of discussion the tribe did invest in that factory, but it's not going on Long Island. It's going on the reservation, adjacent to it because it is a very small reservation. It physically didn't have room for it.

It will open operation next month. It will provide about 100, the first new jobs in that part of the country in a long, long time. It will employ Indians and non-Indians. It will be the first—The unemployment amongst both the Indians and non-Indians in that region, which is very isolated, is very high. It is going to play an important role in reducing unemployment on that reservation.

The Penobscot Tribe, for example, as part of the same process, has taken their unemployment rate from over 50 percent to under 10 percent. That has happened largely because of the joint venture which they have entered into with a rapidly growing injection molding firm in southern Maine, which is now operating a facility with very high productivity. It is one of the most successful start-ups that this firm has had. It has been so successful, in fact, that they are currently adding an additional line, and are right now arranging for the financing to double the entire operation, which will be done over the next year.

Two-thirds of the workforce is Indian. Half of the supervisory people are Indian. There are lessons to be learned from these operations and from these activities. As I say, we have now done other transactions. Earlier this year the Eastern Band of Cherokee Indians acquired the largest mirror manufacturer in the United States in a leveraged buyout, financed with assistance from Bear Stearns.

In that instance, the tribe now owns this company which has 600 some odd employees, and is opening an additional facility on the reservation. The plant is off reservation, and they are expanding the business onto the reservation.

The Lac Du Flambeau Band of Lake Superior Chippewa Indians arranged to buy Simpson Electric Company, which is one of the largest manufacturers of stock electronic equipment in the country. That company was already a major employer of tribal members, and the fear was that it was going to be sold and those jobs taken out of there. The tribe bought the company, now owns it and runs it directly. Again, it violates all the rules. It has protected those jobs.

As I say, we are now closing a transaction in Arizona in which a tribe down there is buying a major industrial facility which will compliment their natural resource base. I think there are several lessons to be learned from this experience.

The first is that leveraged buyouts make a lot of sense for Indian tribes. One of the real problems that exists in Indian country is the absence of management. There are a variety of ways to get management. But one of the best ways, we think, is to buy a company that already has it, and have the management come with the company. Those people then become employees in the tribe and benefit that tribe, both by runing the company for them and by assisting in fostering other activities.

Leveraged buyouts work for other people. There is no reason why they can't work for Indians. The key to a leveraged buyout, as the name suggests, is credit. It is a leveraged transaction. They only work if you're able to get access to credit. The important development that is taking place here is that major financing sources have now crossed the threshold of being willing to lend money to Indian tribes.

The transaction that is closing right now involves no Federal money at all. It is being done entirely with equity from the tribe and outside credit. The credit is being provided by Sumitomo, the largest bank in the world, by Lloyds Bank, the largest bank in England, the National Bank of Canada, and several major funds.

What has happened is that financial institutions have gotten over, have crossed the threshold of lending to Indian tribes, of doing real lending, limited recourse lending, asset based lending, secured lending. Doing that meant getting comfortable with the notion of an Indian tribe. It meant overcoming a whole series of legal obstacles that were perceived to exist.

We have spent a lot of time in the last 4 years addressing and solving those problems, in conjunction with lawyers who represent these financial institutions. We have succeeded in giving them sufficient comfort that these transactions have closed. That is not to say that there are not a great many problems yet to resolve. It is also not to say that this committee could not deal, as we certainly hope it will, with a variety of housekeeping type items that will make financial transactions for Indians immeasurably easier.

But the financial institutions have overcome their reluctance to lend to Indian tribes. The next real threshold, I think, involves the kind of activity which takes place directly on the reservation. We have been able to get financial institutions to lend money for on reservation activity. It has taken place in the context of larger transactions which involve off-reservation facilities. But a great deal remains to be done in the area of on-reservation development.

The corporation which would be established by this bill could be of immeasurable help in that process. We have had several instances in which we have had opportunities that we could bring to a reservation, and have encountered resistance and reluctance on the part of the banks because they want a higher equity threshold when the operation is on the reservation.

In terms of specific suggestions, I have just three that I would mention at this point. The first is that you think of this as a venture fund, and that it be focused as a venture fund. That idea already is clearly in the bill and it is clearly part of the concept. But I think that it could probably be focused more sharply in that area.

I think that the fund ideally would concentrate on providing subordinate forms of debt, of quasi-equity, if you will. It doesn't have to come in the form of equity, although it should be available in the form of equity. But subordinate debt plays the same role and it is equally effective in a transaction.

The object should be in all instances to get private participation in the financing. There should always be a senior tier of financing when possible. A bank should be willing to lend something on an enterprise. They are going to want to be secured lenders. They are going to want to believe that they can get out in a worst case scenario. But their participation brings a level of scrutiny which is very valuable, and provides the form of leveraging which I think is essential.

To the extent that guarantees are provided, I would suggest that they be 100 percent guarantees. The BIA has a practice and I think by law, can provide no more than a 90-percent guarantee. I don't see any good reason for that. When you have a 90-percent guarantee you

run into all kinds of complications with the banks. They go through the same kind of credit exercise if they really have a 10-percent exposure that they would without it. And it doesn't really serve the purpose, as it should, of subordinate debt.

I think if the Government is going to take this risk, it ought to really take it. It ought to really participate in the subordinate position, because as a reality it is probably not going to get paid out on its 90 percent guarantee when the deal goes under anyway.

Third, I think that it should be clear that the corporation can assist in financing the cost of a transaction. The biggest problem that we have, and part of the reason that we created tribal assets, is that it costs a great deal of money to do a transaction. It is very easy, especially in a leveraged buyout, to incur quite large fees, out of pocket costs for outside attorneys, appraisers, consultants, various experts that are needed in putting a transaction together.

Indian tribes typically don't have that kind of money. Normally your investment banks and other sources will not put it up. Tribes don't come to these kinds of transactions with the in-house capability that you usually find in a corporation that, for example, is doing an acquisition.

This corporation could play a very important role if it could make available money for these kinds of costs, because they are the most important barrier many times to tribes getting into this kind of transaction.

Second, I would suggest that you not exclude the possibility of loans to tribes. I know that there is a general preconception that tribes can't run businesses. We have proved that they can, and they're doing it very successfully. It is not easy. The tribe has to have its head on straight. The thing has to run well and it has to be well designed. But it can happen.

There are some significant advantages for direct tribal ownership. I don't think you ought to exclude that. As I read the bill now, it is not entirely clear that a loan or a guarantee can be provided for an operation that is part of a tribe, that is a tribal enterprise.

Finally, I would suggest that you at least consider that this thing may have to be fully federally funded. I don't know that it makes a whole lot of difference for tribes to have an investment in this bank. I don't know that it's going to be that important in accomplishing its ultimate objectives.

There is enough to do. The problem is large enough without linking different pieces of it. I would suggest that you at least consider the possibility of simply having this institution funded by the Federal Government in much the same way that the National Consumer Cooperative Bank was funded by the Federal Government when it was set up.

In closing, I want to thank you for your obvious interest and concern, the time that you're taking in this area. I want to thank the staff and the other members and their staffs for their involvement. It is a very important bill, and I certainly comment you for your effort and wish you success in getting it passed.

The CHAIRMAN. Mr. Tureen, we thank you very much.

I have read the article that appeared in your periodical dated February 1987, Managing Indian Assets. It is a great success story. Without objection, it will be made part of the record.

[Article by Mr. Tureen, to be supplied, appears in the appendix.]

The CHAIRMAN. Do you think that if this enterprise becomes law, it should replace the BIA's credit program?

Mr. TUREEN. Not necessarily. I know the Bureau takes a lot of knocks for its programs. I happen to think they are very useful. We work a lot with the central office of the Bureau of Indian Affairs. We think they have some good and some very dedicated people in that office. Their programs have been very important in the things that we have done.

There is room for both, I think. It's a difficult question and I'm not an expert on that, but I think that it would be unfortunate if the Bureau's efforts were supplanted. The notion of a quasi-independent entity though, I think that is very appealing. I think that it could do things that perhaps the Bureau can't do. It would be healthy to see them both operating.

But I do feel that the Bureau, especially in recent years, has been making a real effort in terms of Indian economic development, and that that effort is very helpful.

The CHAIRMAN. Thank you.

Dr. Ruffing, do you believe that based upon your IFC experience, that this enterprise should be involved to finance infrastructure projects such as roads and water systems?

Dr. RUFFING. No; I have to say. A short answer, no. I don't think it should be involved in infrastructure projects. If infrastructure is missing for a particular business venture that the corporation is intrested in funding, I think then it should work with other people in the Federal Government who are responsible for providing these facilities under treaty obligations.

In other words, as I mentioned in my statement the corporation should be a packager. It should bring together the necessary elements. It should not always provide all the elements itself.

The CHAIRMAN. Should it get involved in financing mega-projects, huge powerplants and coal mines?

Dr. RUFFING. I suppose when we sat down to design this corporation we thought that it would really start out small. If you take the International Finance Corporation as an example and you look at what they did in 1986, you will see that the average size of a project that the International Finance Corporation was involved in was about $10 million. So I don't think the International Finance Corporation is involved in mega-projects, and I don't see this corporation being involved in mega-projects, at least in the very beginning. Later, when it has the experience that it needs, it possibly could get involved.

The CHAIRMAN. I have a question here from Senator Evans for Mr. Tureen. Should trust royalties or the trust revenues be used to capitalize the development corporation, or should tribes be allowed to invest trust revenues in the development corporation?

Mr. TUREEN. I don't think it would be appropriate for the Government on its own initiative to take tribal funds and invest them in this corporation, if that's what's being suggested. I think that it

would be certainly appropriate for tribes to be given the opportunity to invest their funds in this corporation.

As I said earlier though, I think we're mixing objectives. I personally don't think that it is terribly important that this corporation be financed by Indian tribes or by their funds. I think it's important that the Government make this vehicle available.

Tribes, as you know, have been very conservative in the investment of their funds, although a number of tribes are now thinking about options for what to do with their money. It is I think not likely though that a great deal of tribal money will come into this corporation, because to the extent that tribes are looking to get larger returns on their cash, they are going to be looking to put it either directly into deals at their end where their returns can be very large, or into other outside investments where their returns can be large.

It seems to me that we're just mixing objectives. I would much rather see a tribe put its money into a transaction. If I were acting as financial advisor to a tribe, I would prefer to see them put their money into a transaction. For example, where they are providing a 10-percent equity in a leveraged buyout where they have the opportunity for a very, very large return, and they are directly having a necessary stake in their own activity, rather than putting it into this bank.

I suppose if I were advising a tribe and they asked me which they should do, I would suggest that they put it into the business that they are owning. I think from the corporation's point of view, it would be better—The important thing is to have the tribe at risk in the things that they're doing themselves, rather than having tribes at risk in a bank or in the corporation itself. I think it would be more beneficial to stress that.

The CHAIRMAN. Mr. Gibb, do you agree?

Mr. GIBB. I would agree with Mr. Tureen. If in doing an analysis of a particular project, a choice came down between so much money being available and the choice of the corporation and the project, if the return on the project was better, I would do the same as Mr. Tureen would do. I would advise them to go with where the return is.

It may be possible that we find, after this bill passes, that the tribes do not wish to participate on an equity basis. I would also agree that it would be incorrect perhaps for the Government to take trust funds and just invest them without the tribal resolution or that sort of thing.

I have been approached by a number of tribes to design alternative investment strategies for the Bureau's trust funds. Now the Bureau is in the business of trying to privatize those trust funds.

If there was a situation where there was money perhaps for both projects, I would have no problem advising a tribe to try to put money into the corporation, because I believe tribes, by being at risk in the corporation, are sharing the risk with other tribes, and they are also taking an interest in projects which will go on their own reservation.

The tribes who invest in this project, who put in equity, are probably most likely to be the tribes who will avail themselves of the financial alternatives which are available. So I think by making

them participate you make them use it. Not making them. But by asking them to participate you imply a need to use the financing alternatives that are available.

It's their project. If they choose not to use it then there is nothing we can do to make it happen.

The CHAIRMAN. Dr. Ruffing, gentlemen, I thank you very much.

Our next panel consists of the Honorable David Harrison, Councilman of the Osage Tribal Council of Denver, Colorado; Mr. Regis Pecos, executive director of the New Mexico Office of Indian Affairs, Santa Fe, NM; and the Honorable Wilma Mankiller, Principal Chief of the Cherokee Nation of Oklahoma.

Chief Mankiller.

STATEMENT OF WILMA MANKILLER, CHIEF, CHEROKEE NATION, OKLAHOMA

Chief MANKILLER. Good morning. Thank you for the opportunity to appear before you. We have written testimony which will be submitted to you.

The CHAIRMAN. All of your statements will be made part of the record.

Chief MANKILLER. I would like to start just by briefly telling you about our tribe. I am principal Chief of the Cherokee Nation of Oklahoma. We are the second largest tribe in the country. The largest is obviously the Navajo Nation.

Our registered tribal membership is around 75,000. Our tribal landbase is principally in eastern Oklahoma. We are bordered by Arkansas and Kansas.

We are a tribe that is very, very much involved in economic development and the revitalization of our tribal government. We have and have had the same social indicators of decline that every other tribe in this country has had. We have, however, taken some different and very innovative approaches to resolving problems and beginning to try to dig our way out of poverty.

We do not have marketable natural resources. The economic recovery that we have gone through and the revitalization efforts we are involved in are as a result basically of our own willingness and ability to work real hard and look at different options. Our annual budget for calendar year 1986 was $47 million; 53 percent of that income revenue was from non-grant and contract resources. So more than one-half of our income is from business enterprises.

We are making a strong move toward economic development obviously. Contrary to what one of the earlier witnesses said, there are Indian people and Indian tribes who can manage $100 million projects. We have a number of businesses that we are involved in now, and we are very interested in business development.

We are the majority stockholder in a business called Cherokee Nation Industries that has grown phenomenally in the last 10 years. It is an electronics plant. It employs 350 people. It provides both a dividend to the Cherokee Nation and employs a lot of people. The county that the business is located in is my hometown. We used to be one of the poorest counties in the country—not in Oklahoma, but in the country. The unemployment picture there is looking better all the time.

We also own and operate a number of enterprises, one we simply called Cherokee Gardens. It's a retail garden center. A number of horticulture greenhouses and other related businesses are involved there. We also developed some proprietary products and soil mixtures and those kinds of things. We own and operate a lodge and two gift shops. We are in the middle of the development of a number of other major projects, including the development of a hydroelectric generating facility on the Arkansas River, which we also own.

So we are very, very interested in economic development. One of the problems of our tribe and most other tribes, I think, is the need for capital and support for business ventures. For the hydroelectric project we are going out on the open market and raising private capital for that project. It is an interesting project. For all the other projects that we have looked at, except for Cherokee Gardens which we are asking for a BIA guarantee loan for, we have basically had to go and compete on the open market, which has not been easy to do.

We have availed ourselves of the limited resources of the Bureau of Indian Affairs, and those have been very, very good. One of the problems of the real world in Indian country that I and other tribal leaders face is the fact that we are trying to build an economic system. We are not trying to do business development in a vacuum. So what we are trying to do is we are trying to revitalize the people, a group of people, and we are trying to redevelop nations of people of a distinct culture. There are a whole lot of things that occur that are different when you are trying to develop an economic system than when you are trying to do pure business development.

What is being proposed here I think is a good idea for a number of reasons. One is that it involves tribal people. There are literally hundreds of proposals made everyday that affect Indian people, by consultants and other people in Washington. Very rarely do those proposals that affect our lives involve us. So I think that is a very good aspect of this project.

The other is that I think that it recognizes basically where tribes are at. That is what we are trying to do; paralled development. We are trying to do both economic development and social development at the same time. When people say, what are the tribal priorities, they are everything. We can't do, for example, economic development that makes sense unless we have healthy people to work there, unless we have educated people who can work there. So we are trying to develop a system that makes sense.

So we are very supportive of this. There are a couple of concerns that I have. One is that infrastructure is a real problem. This bill does not appear to be something that would support infrastructure, and probably should not support infrastructure directly, then there has got to be some way that other agencies are encouraged that are supposed to be providing infrastructure that encourages those agencies to support infrastructure.

It is awfully hard to do a pure business development project. We know that because we are in a number of business development projects, and we also have people living without indoor plumbing.

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We have bad roads. We have all those problems too. So we know that in order for this to work, you've also got to do that.

What we have been doing now is for the limited resources that are available for the tribe, community development block grant programs and programs like that that we could be using for business development and for the building of clinics and those kinds of things, we have been using those to put in rural water systems and to rehabilitate houses and do those kinds of things that are just meeting the most basic human needs of tribal members.

So I wish there was some way you could at least, in this legislation or in the establishment of this corporation, encourage some kind of participation by the agencies that are supposed to provide infrastructure for tribes, because it's not happening. If it was happening in the way it's supposed to happen, we would be able to use our community development block program funds for other things than developing rural water systems and rehabilitating houses. So that is something that we are very, very concerned about.

I would like to be, because our tribe is a large tribe and because of the fact that we have a number of leaders of experience in this very delicate balance of trying to be a tribal government that is responsive to rural people and that does all the things a good government should do but is also involved in business development, our tribe would like to be very much involved in this to the extent that it is possible.

When there is some more discussion on this about the specifics of how it is going to work, we would be very happy to be involved in that to the extent that that is possible.

Again, we have lots of ideas. We do feasibility studies on a lot of projects. One of the interesting ones that we're doing right now is we are looking into the poultry industry because we are in Arkansas, and our people have always provided the labor. Our people go there and provide labor for very difficult work for the poultry industry. We have reached a point where we can manage and operate our own businesses, and we don't see why we only supply our tribal members to be laborers in that industry, why we can't run one of those businesses ourselves.

So we have, through the support of ANA, just finished a feasibility study on getting into the poultry industry. We have now got to figure out how to finance that project. It looks like a viable project. The poultry industry is going up. Beef consumption is maintaining the same level or going down. All the things are in place. We have got to go from here in a way which we will figure out how to finance it.

With that, we are supportive of what you are doing. We are very pleased to see this support for economic development without the exclusion of all the other development that has also got to occur. Sometimes people have said, well, all of a sudden you have got to become self reliant and do all these business development things. And we agree. But we think that to get from the rhetoric to the reality of self reliance, you also have got to provide all of the services and continue to do all the things that we are doing while we are moving in that direction.

I see a lot of tribes who are doing very positive things in Indian country. Tribes who have experienced a lot of economic develop-

ment projects that have not been phenomenally successful and as part of just the growth and the development process, who are now at a point where they can develop and operate businesses in a very good way. In the southwest there are many examples of tribes who are operating businesses very successfully.

So with that, the other points I want to make are in the written testimony. I just want to say that we are supportive. We are a little concerned with infrastructure and how we deal with that because so many times business goes where there is infrastructure. So in our area, for example, most of us live in rural areas. So you have business development occurring in Tulsa, which is 80 miles away because they have all of those things in place. They have over-developed water systems and sewer systems and all those kinds of things. There just aren't a whole lot of businesses that are just dying to come to rural areas like ours that don't have the infrastructure in place.

So with that, I would be happy to answer any questions.

[Prepared statement of Chief Mankiller appears in the appendix.]

The CHAIRMAN. I can assure you, Chief Mankiller, that your concern mirrors ours about infrastructure. That is why I asked Dr. Ruffing that question.

We will be encouraging and urging appropriate agencies to participate. I can assure you that.

Chief MANKILLER. That is still a serious problem, a very serious problem

The CHAIRMAN. What is this hydroelectric project that you have on the Arkansas River?

Chief MANKILLER. It is in Sequoyah County. It is part of a grid system at the W.D. Mayo Lock and Dam. It is a very complex Federal/private partnership that will be a partnership between the Southwestern Power Association, the Cherokee Nation of Oklahoma, and the U.S. Army Corps of Engineers.

It has required enabling legislation because as you well know, the Army Corps of Engineers normally does these kinds of projects. So it is an attempt to really do something in a very different way. We are looking at it as a way to provide long term income to the tribe, again looking 25 years down the road at where we are going to be just to have some income.

We have no marketable resources like the other tribes. Our only natural resource that we have that we can use for our economic development is the banks and beds of the Arkansas River. We are also starting to lease sand and gravel and do some other things to develop that resource.

The CHAIRMAN. What sort of investment is projected for this project?

Chief MANKILLER. The range is somewhere in the $70 million range, somewhere around there.

The CHAIRMAN. Thank you very much.

Chief MANKILLER. You're welcome. Thank you. I need to go somewhere else, so I won't stay to support Regis, but I do support him very much.

The CHAIRMAN. Thank you very much.

Our next direct witness is the executive director of the New Mexico Office of Indian Affairs, Mr. Pecos.

STATEMENT OF REGIS PECOS, EXECUTIVE DIRECTOR, NEW MEXICO OFFICE OF INDIAN AFFAIRS, SANTA FE, NM

Mr. PECOS. Mr. Chairman, on behalf of the 22 tribes of New Mexico, the Navajo, the two Apache, and the 19 Pueblos, I want to thank you and your staff for your efforts on this whole matter.

We believe that this represents one of the first major efforts to comprehensively approach the development of the private sector on the reservation. It's not just a matter of, as some have pointed out, attracting the private sector to the reservation. As it is in many cases specific to New Mexico, there is a total absence of a very basic business infrastructure to meet basic needs on reservation(s).

Some have mentioned earlier the whole multiplier effect. Many situations in New Mexico represent a total lack of that kind of a business infrastructure providing the multiplier effect. So it is not just a matter on many reservations that we develop projects for the sake of jobs as it is developing that private sector within those reservation communities to meet some basic needs.

Isolation was given as one example of how these projects cannot work. But if this isolation is true, as it is in New Mexico, that should give us impetus to look at how we can develop that very basic infrastructure to meet some very basic needs. For the relatively undeveloped reservations, the corporation may not totally reduce the risk to private investors but it certainly will provide Indian tribes with alternatives. It will help mobilize capital and encourage local investment. It will create a process that, as the local economic support system develops, projects will face the scrutiny and rigorous evaluation to increase the chances of survival. This we hope can be the beginning of the end of a vicious cycle that has existed and plagued reservation communities for many years, as has already been pointed out. It will stimulate the development of a private sector on the reservations which in turn will allow the institution to be self-sustaining.

Let me give you an example specific to New Mexico. With the declining oil and gas industry in the State, the State is developing a comprehensive economic diversification plan. We fought very hard to have the reservations included.

But in absence of this kind of a mechanism that this corporation would provide, it is unrealistic to think that we could incorporate the tribes or the reservation communities into the fabric of the larger economic picture in the State of New Mexico. This concept before us, is the key ingredient absent. It would provide for bringing together financing, technical assistance and management advice.

Mr. Tureen pointed out the success of the tribes that he has worked with. Senator Domenici has pointed out some examples in New Mexico in terms of some success that tribes are enjoying. I think all these cases represent true successes on those reservations because of one primary and major factor: that is access to the financial network. However, these are simply exceptions to the rule in terms of access to this network. That creates a stable business environment.

I believe the corporation will be one major alternative to many tribes to stimulate the development of a private sector on the reservations. This we hope will be the beginning of the end of a vicious cycle which has plagued reservation communities. It will stimulate the development of a private sector on the reservation which will in turn allow the institution to become self-sustaining.

We are prepared to submit to you and the committee a detailed analysis of the bill. But for now we felt it was important at this stage of the legislative process that we be here to support in principle your efforts on this matter. On behalf of the tribes of New Mexico, I want to thank you very much for all your efforts to address a very serious concern that I think if we are to prevail in the passage of this piece of legislation, will put us on a track that is going to lead to many successes and establish that as a rule rather than the exception, economic development successes that too few tribes are enjoying at the present time.

Thank you very much.

[Prepared statement by Mr. Pecos appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Pecos. We look forward to receiving your analysis and your recommendations. I can assure you that we will study them very carefully.

Mr. PECOS. Thank you.

The CHAIRMAN. Our final witness this morning is a member of the Osage Tribal Council, the Honorable David Harrison.

Mr. Harrison.

STATEMENT OF DAVID HARRISON, COUNCILMAN, OSAGE TRIBAL COUNCIL, DENVER, CO.

Mr. HARRISON. Thank you very much, Mr. Chairman.

I apologize for my abrupt and tardy entry here. I am trying to squeeze in—I have a conflict. We have people on the other side of the Hill discussing some important minerals issues this morning, and I need to be in both places at once.

Like Mr. Pecos, however, as important as that issue is I also thought it was important to be here and let this committee know that the initiatives that this committee has undertaken already in the area of economic development, including the proposed Indian Development Finance Corporation, have been the subject of attention and discussion in the tribal council at home.

The Osage Tribal Council at least wishes to express its appreciation to this committee, and offer its support also for the initiatives that you have undertaken, and express our view of the need for the kind of things that are represented by the proposed Indian Development Finance Corporation.

Toward that end, it is really not unrelated, what I am doing on the other side of the Hill this morning. My tribe at home, for instance, collects some $22 million a year off its mineral income, and we can't do business with the local banks. They will take our deposits. But in the last 3 years we have bought three existing businesses, including a prefabricated housing outfit, a clothing manufacturing process and some pipe and supply activities, and in all of those we have not been able to find either local credit or local man-

agement and expertise to bring to devote its time and lend its efforts to helping the tribe undertake these kinds of activities.

In that regard I might point out also that over the last few years I have worked with a number of other tribes developing a $5 million motel lounge complex in one place, putting together a sheet metal bending and heavy rolling stock manufacturing plant on a reservation in North Dakota that has done some $30 million with the Defense Department since it was established.

In all of those cases we have found that we had to employ a back to the well, start from scratch approach to find an outfit somewhere that is willing to set aside the prejudices and the stereotypes that have too long been associated with doing business in Indian country, and would try to work with us.

The point I would like to make here is that while there have been some considerable and commendable successes in developing businesses and economic activities and enterprises on Indian lands—and I think you probably heard some of those from Mr. Tureen this morning, whose record in this area is perhaps *non-Pareil* at this point—but the point I would like to make that in no place is there an institutionalized capability to make this kind of thing happen. There is no way to replicate success, even on the same reservation.

Every effort, every initiative, every enterprise is a separate start from scratch, try to find a way to package the financing, the managing, the talent, the expertise, and locate the markets. We simply do not have in Indian country this capability and have not had, notwithstanding the wide array of programs and Federal agencies that have tried to make a dent in the virtual lack of home based economies on our reservations. There has been no success in institutionalizing the capabilities to do business from place to place or from time to time, such as we find in the non-Indian world.

A guy who can buy himself businesses in Oklahoma can do it in Colorado, California, Wyoming, New Mexico. But a guy who can put one together a business on one reservation simply does not have a network. He is not a part of a commercial, financial family that he can take with him to do business from place to place.

That is one of the things that I think this proposed Development Finance Corporation offers that is really tremendously exciting. That is the opportunity not only to marry for the first time capital, management assistance, expertise, and location of markets, but also to institutionalize in one place that kind of capability so that it can be accessed not only by my tribe, but by tribes all over the country.

We have seen the Departments of Commerce, Health and Human Services, Interior, Labor, and even Transportation all provide a series of programs, financial assistance, grants, contracts, loans. And those have been very useful and those have been very helpful. But there does not come with any of those efforts at assistance the equally necessary kinds of management, or financial acumen, if you will. Acumen does not always come with the money. Management assistance does not always come with the economic activity.

We are very excited about the prospect of having this Congress establish an institutionalized capability for tribes such as ours and

other tribes that we do business with to come to one place and find access to capital, access to management expertise, and access to financial assistance, and putting those together in a way that will work.

We have seen in too many places, well meaning and well intended, easy access to capital or easy access to debt that has not necessarily done us a favor. We have in too many places in Indian country, businesses that were sprung up, or started, or taken over or bought simply because money was available, but little else. And that little else that might have made a difference was the ability to analyze and assess whether it made sense to undertake that debt or not.

That is, in our view, a critical missing element that is proffered to Indian country for the first time in the concept underlying this Development Finance Corporation. For the Osage Tribal Council at least, we are excited about continuing to work with the committee in trying to assist in putting this kind of an institution together to serve all Indians.

If you have any questions I would be glad to answer them.

The CHAIRMAN. Right now my full time job is with the Council of Energy Resource Tribes. In that forum, we are involved in a number of businesses, everything from trying to put local utilities together to financing hydroelectric plants to doing an 800,000 bird a week chicken farm to chartering a national bank on the Blackfeet reservation. So we get a lot of exposure to many different kinds of businesses that belong to the 43 tribes that belong to the Council of Energy Resource Tribes.

The CHAIRMAN. I thank you very much. Several other witnesses have given me credit for this measure, but I think the record should show that the principal author of the Indian Finance Development Corporation Act is sitting right here. He is the staff director of this committee, the former president and chief executive officer of the Indian Bank, Alan Parker.

So if we get through with this, this will be known as the Alan Parker Indian Finance Development Corporation Act.

Mr. HARRISON. In that regard, let me say that we have known and worked with Alan and his colleagues on this concept. I make that sound like I have been one of those. I have been watching Alan and his colleagues work this concept for many years. I think for all of us who have watched this process and this concept evolve, we are grateful that he is now in a position where he has the opportunity to try to make this thing work.

In this regard I would also like to say that we see this really as of a piece with some of the other things that the committee is trying to do, as in the Economic Development Act, the industrial development bonds, the amendments to Public Law 638 and the amendments to the Indian Finance Act.

We really are looking at this—We realize you have to do them one at a time, but for us out there on our end, we are inclined to be less interested in the labor pains that you go through here. We are just waiting to hear that baby cry on our end.

The CHAIRMAN. We will let it happen. My concern is that when this measure passes and it becomes a reality, we will lose Alan because he will be chairman of the corporation then.

Mr. HARRISON. When that happens, I hope Alan remembers which one of us were here to support him on this.

The CHAIRMAN. I thank all of you very much for your participation this morning. It has been most helpful. We look forward to working with you.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF DR. LORRAINE RUFFING

The causes of Indian economic underdevelopment are rather well known; they have been documented countless times by the US government starting with the Merriam Report (1928) and ending with the Administration's recent attempt.

One or more of the following essential ingredients have been found to be missing:

1. long-term capital in sufficient amounts, i.e., the Indian Finance Act provided 0.1% of what is needed; moreover it is a one-shot deal with no leaverage or technical assistance component.
2. control over land, resources
3. managerial expertise.

Different reports/people emphasize different obstacles. Since we are now relying more on the "free mnarket", it's fashionable to stress management skills but it's important not to be simplistic. The most fruitful approach to development is a balanced one; most of the past failures resulted from the absence of a number of factors since the federal government and Indian tribes were seldom able to draw together all the necessary ingrediants. These would include:

1. a stable business environment where the rules of the game are clear;
2. technical assistance including project evaluation, training, management advice.

The proposal before you was put together by a group of economists, development planners and lawyers who were well aware of the harsh economic environment on Indian reservations; we knew what the problems

are, what the obstacles are and we designed a solution over the space of 2 years. This was not a camel-building exercise but rather a serious effort to come up with a workable solution.

One institution which impressed us was the International Finance Corporation (IFC) which is celebrating its 30th birthday. The IFC is part of the World Bank family which includes the World Bank and International Development Association (IDA). The IFC has been the catalyst for private investment in developing countries since 1957. It brings together financing, technical assistance and management advice. It provides loans and equity to the private sector. It does this because the private sector can provide a thrust for economic growth that comes from no other source. The scale of its investments is not large since the task is to bring other investors along; it never invests alone. Its share in total project costs averages around 10 per cent. During the past 30 years it has promoted 933 ventures worth $33 billioon (IFC stake = $2.3b.) So it's a rather solid success. In fact, the Interamerican Development Bank is in the process of setting up an IFC for Latin America. The IFC has also become a financial innovator in these troubled times and has encouraged debt/equity swaps in some debt-ridden countries.

As you might have guessed the Indian Development Finance Corporation shares a number of common features with the IFC.

- Indian tribes are encouraged to contribute equity capital
- Corporation can borrow in the private market.
- It will finance projects in the private sector by providing loans; arranging co-financing and by taking an equity stake.

By combining capital, solid project evaluation and technical assistance in the form of management advice and training, it brings a stability to the Indian investment climate which has previously been lacking and which other institutions cannot provide.

A commercial bank cannot

1. identify and put together projects from start to finish;
2. give LT capital;
3. give technical assistance in the form of training and management advice;
4. monitor the venture closely in order to ensure that all the investors will see a return.

The Corporation will not only decrease the risk to private investors through its multi-faceted approach but it will also provide Indian tribes with alternative, secure investment opportunities.

I think the Corporation will be a rather conservative institution in that it will start modestly; it will undertake rigorous project evaluation; it will maintain a low debt/equity ratio and will seek to attract highly qualified staff. It will have to do all these things because it will have to make a profit to survive, grow and prosper. Hopefully, it will act as a catalyst for investment in Indian country and will encourage local investment. It is intended to mobilize capital, not replace it.

I might add that the proposal for the Corporation is entirely consistent with recent recommendations for accelerating business development on some reservations such as the Navajo Nation. Senator Dominici mentioned the Navajo Economic Summit to be held 25 July. One of the important features of their current tribal strategy is to provide adequate sources of credit and financing for business start-ups. It is a job the Navajo Nation can begin but cannot do alone. They are willing to commit $4 million to an economic development fund -- what if the Corporation existed and they committed it to the Corporation? They would receive not only a return on their funds but access to long-term finance and a partner in development who could provide the technical assistance they need.

I would like to emphasize we aren't setting up a new mode of doing business but one that nas stood the test of time. We have learned a lot from the IFC experience and we have adapted it to the realities of Indian reservations and communities. I am confident that this Committee can complete the design of a corporation which can develop into a self-sustaining institution which will be an investor, a lender, a packager, a guarantor and a broker for Indian enterprises and will thus be capable of stimulating the private sector on Indian reservations for many years to come.

Specific comments on S.721

Page 3, line 24: change "so-called lesser developed" to "developing".

Page 12, line 6: 25 per equity should remain as is; the Corporation will be extending long-term loans as well as taking an equity position so that it will not put too severe a repayment burden on the enterprise. The IFC's average stake is 10% equity and loans combined.

Page 15, line 4: change "fiscal" to "financial".
I associate fiscal with government financial powers and policy (like the ability to tax and to spend); financial is more appropriate in a market situation.

Page 23, line 23: the tax exemption for the Corporation's bonds is extremely important.

Page 26: lines 17-19 should be changed so that only (2) is limited to 5 years -- that is, the offer of matching stock; it would be unwise to arbitrarily limit the time period in which Indian tribes can buy stock.

Page 31, lines 1-6: why is it necessary for the Corporation to wait 20 years to sell debt instruments in the open market? I would eliminate the time limit.

Page 31, lines 13-15: Do you anticipate any opposition on the part of Treasury in approving the terms and conditions of obligations? Is this necessary since there is a $5 m limit for guaranteed debt obligations.

Features missing:

Corporation stock should be eligible for an investment tax credit and dividends should be tax exempt. This is important, given the possible reluctance of private sector to invest in the corporation. Bond holders' earnings should also be tax exempt.
The Corporation should have the possibility to sell debt to Federal Financing Bank.

PREPARED STATEMENT OF DENNIS GIBB

Mr. Chairman, members of the committee, ladies and gentlemen, I would like to thank you for the opportunity to appear before the committee and offer testimony on S 721, it is an honor and a priviledge to be here.

To get straight to the point I will say that I support the enactment of this bill with some modifactions. After saying that I hope that you will allow me to explain my reasoning for supporting this bill.

Every time I visit an Indian reservation I am struck by the two basic problems of Indians, poverty and unemployment, these problems are both extreme and persistent and while in recessions they expand greatly the resultant detumescense of unemployment and poverty in good times seems not to effect the Tribal economy. The reasons for the existance of these social ills on Indian reservations today are no more understood than they are in general society; in fact they may be less understood because they occur within a reservation context.

Past efforts to alleviate the problems of destitution and unemployment have been largely failures, or to be charitable, qualified successes. There are various reasons for this lack of success. First and I think most importantly, prior efforts were aimed in the wrong areas, you can not expect a tourist industry to develop if you can not shelter the tourist from violence, views of extreme proverty , provide adequate recreation, and provide suitable accomodations manned by people trained, able and willing to serve the needs of the tourist, yet past efforts have attempted to ignore these facts and create an industry that did not exist.

Corallary to the misorientation has been the attempt to build Rome in a day. We want to do it all now, and with seven league boots take reservations and Indians from the 19th century into the 21st century without the learning curve in between. This will not work. If you have no businesses you do not need a business park. The establishment of a business park in Lame Deer Montana, regardless of its physical features, is not going to cause businessess in Billings to stampede to Lame Deer. Because of the geographic isolation of most reservation lands there is little need for this type of development, a business park satisfies a need it does not create a need. Efforts preceeding this legislation have attempted to satisfy needs that do not exist.

The real failure of Indian policy has been a failure of acculturation i.e. a failure of Indian people to partcipate in the dynamic cultural growth of the non Indian society.

In the past Indian economic aid, however well intended, has served the expidient ends of the political establishment rather than the needs of the Indians. The very fact that the aid has been gratis and governmental has destined it to be less successful than other forms of assistance. In some cases, from the Tribal perspective, government progams have not be fully implemented or prosecuted. The best assistance is that which is generated within the society and assists individuals to pull themselves up by their bootstraps. As witness to this is the current fascination with, and apparent success of workfare programs. It has been observed that it is difficult to pull oneself up by your bootstraps if you have no boots. This is true, however, the most productive aid would first provide boots with straps and then help with the pull.

Along with the lack of sucess with government sponsored aid there has also been a reluctance of the private sector to provide financial services to Indians. In fact private industry's pursuit of profits has often made them the villians in the horror stories of Indian mistreatment and exploitation. In business you assume that the fellow opposite you is as smart and prepared as you are, if he isn't you take advantage of that weakness to improve your business opportunities. In the past Indians have been no match for the sophisication and experience of private industry consequently, agreements were signed which were not in the best interests of the Tribes. It is difficult to understand discounted cash flow analysis if you are not conversant in algebric expression.

Today this type of activity is less and less prevalent due to the increasing accomplishment of the Tribes, their willingness and ability to hire private sector advisors, and the greater understanding by the private sector of the Indian's roles and capabilities in the process.

Private sector companies and especially those in the financial intermediary industry tend to be most interested in larger scale projects. It is just as expensive in terms of time and effort to do a $1 million dollar financing as it is to do a $40 million one; but the fees on the $40 million are much larger so profit margins increase. Careers and reputations are built on the size of the financings arranged or partcipated in so the bigger the better. This has led to a reluctance of the private sector to finance the smaller scale projects and businesses which represent the areas of greatest need for Indian people.

Indians themselves have contributed to their own problems, by failing to establish a stable political structure, by not fostering in the private sector an understanding of cultural beliefs, by failing to gain sophistication in the workings of the private sector, and a failure of Tribal leadership to establish concrete planning guidelines, these problems in addition to the insular and colonial nature of Indians gained as a result of long abuse and mistreatment has added to the unwillingness of the private sector to finance any but the best of the Indian related projects. The poor past operating record of Indian enterprize in general has lent credence to the private sector's unwillingness to invest in Indian related projects. As an aside I should note that Indian Tribes frequent use of litigation and the difficulty of collecting a damage award against a Tribe raise a great deal of concern in financial circles.

These failures have placed Indians in a poor bargining positions in joint ventures because they have not had the capital to be owners of the project or the capacity to finance the project themselves. In our country the one with the money generally makes the rules of the game. Because there has been little internal capital and the existance of the previously mentioned concerns private sector firms believe that risks in Indian related projects are higher than in non Indian projects. This presumption of risk is quantafied by the financial industry as a cost related to the project under consideration, therefore two projects of similar nature, one Indian and the other non Indian, may have similar projected economic virtures but the non Indian project will be financed first since the precieved costs as they are relate to risk are less.

Essential to understanding the chronic underdevelopment of Indian reservations is an awareness that they lack economic infrastructure. I define economic infrastructure as being the means by which the economic wealth of a society is created. This is different from phyisical infrastructure which encompasses electricity, road networks, transportation facilities, flood control and water distribution networks. While the physical infrastructure is not of equal quality in all areas of the nation it exists.

To understand this concept further it is helpful to understand that Indian reservations have a great deal of similarty economically and demographically to LDC's a situation recognized by the legislation under question.

An Indian reservation is largely an economic sieve. When money is poured in the the top it immediately runs out the holes with only minor amounts left inside. In economic jargon reservations lack the ability to take advantage of the multiplier effects. This effect is defined as the total income of the economy divided by the marginal propensity to save. For example if the savings rate is .5% then the multiplier is 20 so that each dollar entering the economy generates $20 of additional economic benefit. This multiplier effect is what gives the growth factor to the economy.

On an Indian reservation the multipler would be larger than in the general economy since most are subsistance economies and there is little money for discretionary savings; as the propensity to save decreases the multiplier increases so a dollar added and kept in a subsistance economy will have a greater impact than a dollar added to a high saving economy. This lack of savings has a negative impact in that it hampers capital formation.

The multplier can only operate if the dollar stays in the economy. Indian reservations are not seperate economies they may be seperate culturally, legally, and sociologically but they will effect and be effected by regional, national and exogenous economic factors. Because they are sieves, monies earned in wages on a reservation flow largely to the non- Indian, off reservation, economy because the goods and services needed to retain the money are not available on the reservation. As an example I do not know of one reservation that has an automobile dealership located on its lands, so the $15,000 or so that is spent on an automobile goes off the reservation and the effects of that spending are only marginally felt by the reservation.

Due to the geographic isolation of most Indian reservations and the low relative population denisty of the surrounding non Indian areas reservation economies have the ability, if correctly fostered, to be the economic engine of their regions. Reservations represent the largest concentration of employable personnel, perhaps the largest land base, possess a lion's share of the natural resources in a regional situation, and in all probability have the largest capital inflows in terms of wages, grants,lease payments et cetera..

If these attributes could be converted to economically viable tools there could be significant salutary effects on both the regional population and the reservation economy.

None of these economic miracles can happen without the development of the economic infrastructure on the reservation. Unfortunately this will not happen overnight but the enactment of this bill, would be in my view a

good first step. The problem needs to be approached systematically rather than symptomatically. Poverty and unemployment are only the symptoms of a system failure. This bill begins to look at the problems as a system.

Legislation can not make people creative, nor can legislation give people experience in managing businessess, no single piece of legislation passed by itself can be the total solution to a problem that has been generated by long periods of neglect and mismangement.

Legislation can only be ultimately effective, cure the problem, if its part of long term program well thought out and executed by people dedicated to the proposition.

In the case of American Indians there is no clear record of creativity in business, there have not been the educational opportunities to teach those elements of creativity and management that have been defined and are able to be taught. Additionally mangagement opportunities have not be sufficiently abundant to allow the level of skills to grow so most Indians possess only rudimentary management skills. Congruent with most LDCs Indian reservations have experienced a brain drain. So any effort to assist Indians in bettering themsleves through business ventures must start from the proposition that essential skills must be developed

People who have been generations without hope of betterment seldom have the motivation to change their situation. This dismal assessment leads me to believe that this bill may be the first step to correctly addressing the problem of the development of the economic infrastructure

by allowing those who have not lost hope a method to realize their dreams and aspirations.

The relatively small size of the captial to be raised under the terms of the bill spread across the total Indian poplulation ensures that the amounts dedicated to each project will be small. Indians by and large are not ready to manage large scale business, they need experience in small busniess first and this bill should encourage the development of those businesses. I believe that section 3 (E) (ii) [page 6 at 17] and all references made to investing only in businesses that are on reservation should be ammended. My opinion is that the Corporation should be permitted to invest in businesses that are immediately adjacant to the reservation if those businesses will be owned by Indians. The language of this section is insufficently precise. Let me illustrate.

Reservations often do not have a sufficient population to create the critical mass needed for some service businessess to exist entirely off the reservation population. But if adjacent to the reservation or even some distance from the reservation is a service business that draws customers from adjacent reservations or the non Indian population but a substantial portion of its business is represented by Indians, it makes investment and economic sense for Indians to own the business. The employment preference laws have clauses in them which state the the preference shall be enforced on or near the reservation, the language in S721 should be similar and ammened to reflect this change and remove possible confusion.

Conjuctive with the ownership of off reservation business the bill must

encourage other Indians to establish the items of the economic infrastructure on the reservation itself so the multiplier effect can begin to work.

Additionally I feel that Section 3. (a) (1) should be ammended, the definition of Indian should be changed to read an enrolled member of a Tribe. This change will prevent the establishment of business in which an Indian merely serves as a front for a non Indian operator.

The provisions of Section 102d(1) [page 12 at 6-15] should be ammended in as far as they reference the portion of equity capital that is allowable for the corporation to own. The limitation of 25% is probably going to turn out to be low. One of the first lessons I learned about entrepreneurial business is that entrepreneurs are always optimistic as to the amount of capital needed and the time needed to realize profits. Almost invariably businessess require far more capital and time to flower than is antcipated and this need for additional time and money will require that the Corporation be able to take additional equity positions.

It should be remembered that the goal of funding in this case as stated on page 9 at 18-22 is to provide funds at the lowest reasonable cost thereby reducing the operating burden on the fledgling business. Each financing package will have different costs depending on a variety of factors so that the limitation of 25% may cause the intent of the bill to be defeated by artificially raising the cost of the financing, and limiting the financing alternatives available.

My second concern regarding this section is that using the methods commonly employed by venture equity investors for determining the amount of equity ownership applicable to a given cash investment, and adjusting the desired return ratios for the risks of this type of business, that is business which are to owned and run by first time entrepreneurs, it is possible that the amount of money that will be represent 25% equity will be to small to really be of service to the business owner. Therefore the Corporation will find itself in a quandry as to how to best finance the business.

I also feel that Title 1 Section 101(c) should be changed. In locating the office of the corporation in the District you forever stamp its as a Federal operation which is what really needs to be avoided. Additionally most of the Indian population lives west of the Mississippi River and since six members of the board of directors are to be Indian representives of shareholder Tribes it would seem logical to have the office located more centrally to the people it seeks to serve. This centralized location could help reduce operating costs of the Corporation and perhaps allow the Corporation access to greater pools of manangement and administrative talent.

In summation, I support this bill, it appears to be well thought out and concieved. Legislating the existance of this Corportation will not ensure that it accomplishes its goals however. The excution of the mandate is what will ensure that accomplishment. Unless the Corporation and its staff are free to pursue a course of action that is dedicated to the proposition

that developing economic infrastructure is the first step to long term improvement in Indian economic conditions the Corporation is doomed to fail. Congress must accept the fact that you are committing the country to a long term project whose progress at first will be measured in inches not miles.

We must replace the vicious cycle of poverty, unemployment, anomie, hopelessness and failure with the virtuous cycle of accomplishment, self esteem, success, hope and pride. The needs are far greater that this legislation can begin to address but it represents a hopeful first step. We must not fail the effects of such failure will be felt by generations yet unborn both Indian and non Indian.

PREPARED STATEMENT OF WILMA MANKILLER

Chairman Inouye, members of the Committee, thank you for allowing me to testify before you on such an important issue. My name is Wilma Mankiller, and I am Principal Chief of the Cherokee Nation of Oklahoma. Cherokee is the second largest tribe in the United States with 75,000 members. We are located predominantly in 14 counties in Oklahoma, and have several thousand members living throughout the country. We are also extremely proud of what we have been able to accomplish with Cherokee Nation industries, of which we are a majority shareholder. CNI, thanks to talented management and a workforce of hundreds of determined, energetic tribal members, is one of the most profitable and rapidly growing enterprises in Indian country. Another tribally spawned enterprise, Cherokee Nation Gardens is steadily expanding, providing more revenue and more jobs. Mr. Chairman, we have other, exciting projects on the drawing board; a proposed poultry processing facility, a hydroelectric plant on the Arkansas River -- I could go on and on. To take these projects from the drawing board through conception, implementation and operation, will require a substantial commitment of resources from the Tribe, from the private sector and from this Congress.

We simply must move ahead. The Cherokee People want, and need, to work. They need decent, skilled, fair paying, challenging jobs. They have no more desire to be on unemployment, and dependent upon public support, than you or I. And I know you share my view that an investment of Federal resources in an Indian Development Finance Corporation is just that, an

investment in our future and will expedite the day when Federal welfare dollars flowing to Indians can be offset by incomes earned by Indians.

On behalf of the Cherokee Nation of Oklahoma, I would like to thank you for the focus and attention your Committee and yourself personally are giving to the critical issue of Indian economic development during the 100th Congress. Your drive to enact such legislation before the Committee as the Indian Economic Development Act (S.788) and the bill before us today, The Indian Development Finance Corporation Act (S.721), and the potential overhaul of our nation's contracting and procurement laws will go a long way toward assisting tribes such as ours to develop economically strong communities free from daily dependance on Federal welfare. We need for you to succeed at this most noble effort.

THE INDIAN DEVELOPMENT FINANCE CORPORATION BILL ACT

I strongly endorse S.721, the proposed Indian Development Finance Corporation Act. Poor access to debt and equity capital remains an obstacle for tribally owned enterprises attempting to expand their operations. Capital is an essential ingredient for development. Without it, development cannot occur. There are many projects within our jurisdiction that could be successful were adequate seed money available. Obviously, the $100 million authorized to carry out the provisions of the Act would make a significant contribution toward financing projects on Indian lands.

INDIAN PARTICIPATION

Mr. Chairman, I support this bill for other reasons as well. Predominant among them, is your attempt to involve Indians in the management of such a corporation. The language of Section 102(a)(4), "encourages active participation in the corporation by Indian tribes and individuals by ownership of its equity securities." I am also pleased that six of the 12 board members of the corporation will be tribal representatives. Those tribal board members chosen by the President once "the President has consulted with, and received nominations from" the tribes.

These provisions may seem of minimal importance to some people. However, many laws are passed by the Congress that affect Indians, and the rules and regulations governing the day-to-day application of such laws are often written by people with little knowledge of Indians' special needs and interests. Having six members on the board who are truly our representatives should preempt this from happening.

FUNCTIONS OF THE CORPORATION

I believe that the ultimate success of the corporation will depend on its success at "seeding" tribal economies with soundly capitalized enterprises. These firms, in turn, would act as catalysts for further development, by dramatically enhancing disposable incomes among tribal members, and by spurring the creation of other firms providing goods or services further along

the manufacturing chain. In this regard, we will need to develop enterprises that will not only provide jobs through manufacture and production of their own goods and services, but whose production will sufficiently entice other enterprises to locate in our area and provide a wider range of jobs and training.

Certain assistance programs established by the corporation should help Indian enterprises set appropriate sales and profit objectives and then attain them. Historically, Indian enterprises have benefitted from assistance in their formative stages in such areas as Project Development, Technical Assistance and Training, Project Evaluation and Auditing and Fiscal Management. Their inclusion in the legislation is an important complement to its core financing provisions.

CONCLUSION

I appreciate the opportunity to speak to the Comm.ttee on the important issues before us. Indian people want the opportunity to succeed. All we can expect is a fair chance and the tools to accomplish our goals. I am very encouraged by the work and direction of this Committee. We now need to move these legislative vehicles pending before the Congress through the legislative process so that Indian people are provided the necessary tools that will enable them to succeed in reaching their goals.

PREPARED STATEMENT OF REGIS PECOS

Mr. Pecos. Mr. Chairman, on behalf of the 22 tribes of New Mexico, the Navajo, the two Apache tribes and the 19 pueblos, I want to thank you and your staff for your efforts on this whole matter.

We believe that this represents one of the first major efforts to comprehensively approach the development of the private sector on the reservation. It's not just a matter of, as some have pointed out, attracting the private sector to the reservation. As it is in many cases specific to New Mexico, there is a total absence of a very basic business infrastructure to meet basic needs on reservation(s).

Some have mentioned earlier the whole multiplier effect. Many situations in New Mexico represent a total lack of that kind of a business infrastructure providing the multiplier effect. So it is not just a matter on many reservations that we develop projects for the sake of jobs as it is developing that private sector within those reservation communities to meet some basic needs.

Isolation was given as one example of how these projects cannot work. But if this isolation is true, as it is in New Mexico, that should give us impetus to look at how we can develop that very basic infrastructure to meet those needs. For the relatively undeveloped reservations, the Corporation may not totally reduce the risk to private investors, but it certainly will provide Indian tribes with alternatives. It will help mobilize capital and encourage local investment. It will create a process that, as the local economic support system develops, projects will face the scrutiny and rigorous evaluation to increase the chances of survival.

Let me give you an example specific to New Mexico. With the declining oil and gas industry in the State, the State is developing a comprehensive economic diversification plan. We fought very hard to have the reservations included. But in absence of this kind of a mechanism that this corporation would provide, it is unrealistic to think that we could incorporate the tribes or the reservation communities into the fabric of the larger economic picture in the State of New Mexico. This concept before us is the key ingredient. It would provide for bringing together financing, technical assistance and management advice.

Mr. Tureen pointed out the success of the tribes that he has worked with. Senator Domenici has pointed out some examples in New Mexico in terms of success that tribes are

enjoying. I think all these cases represent true successes on those reservations because of one primary and major factor: that is access to the financial network. However, these are simply exceptions to the rule in terms of access to this network that creates a stable business environment.

I believe the corporation will be one major alternative to many tribes to stimulate the development of a private sector on the reservations. This, we hope, will be the beginning of the end of a vicious cycle which has plagued reservation communities. It will stimulate the development of a private sector on the reservation which will, in turn, allow the institution to become self-sustaining.

We are prepared to submit to you and the committee a detailed analysis of the bill. But for now we felt it was important at this stage of the legislative process that we be here to support, in principle, your efforts on this matter. On behalf of the tribes of New Mexico, I want to thank you very much for all your efforts to address a very serious concern that, I think, if we are to prevail in the passage of this piece of legislation, will put us on a track that is going to lead to many successes and establish, as a rule rather the exception, economic development successes that too few tribes are enjoying at the present time.

Thank you very much.

SECTION BY SECTION

"Indian Development Finance Corporation Act"

Section 1 - Title
Provides that the title of the Act may be cited as the "Indian Development Finance Corporation Act."

Section 2 - Congressional Findings and Purpose
This section declares it to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment. The goal of Indian people to achieve lasting economic self-sufficiency through the development of the private sector of tribal economies would be most appropriately assisted by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and technical assistance utilizing the proven efficiencies of the private market mode of operation.

Section 3 - Definitions
Contains the definitions for use in this Act, including eligible Indian business enterprises to mean any commercial, industrial or business activity -

(A) which is operated for profit,
(B) at least 51 percent of which is owned by Indians or Indian tribes,
(C) which produces or furnishes goods, services, or facilities whose -
    (1) principal place of business is located within the boundaries of an Indian reservation, or
    (2) principal business activities are determined by the Corporation to be directed at contributing to the economy of any Indian tribe.

Such term includes any entity which is wholly owned or controlled by any commercial, industrial or business activity described in the preceding sentence.

TITLE I - ESTABLISHMENT OF CORPORATION

Section 101 - Creation
Establishes the Indian Development Finance Corporation

Section 102- Functions

(A) This section defines the duty of the Corporation to include providing development capital; encouraging the development of new and existing Indian business

enterprises; maintaining broad based control of the Corporation in its voting stockholders; encouraging participation in the Corporation by Tribes by ownership of its equity securities; and assisting in strengthening the private sector of tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies.

(B) This section specifically authorizes the Corporation to make loans or commitments for loans to any Indian business enterprise which has a sound organizational structure, income in excess of its operating costs, assets in excess of its liabilities and a demand for its goods and services. Loans shall be repayable in not more than 40 years and upon such terms, rates and charges as will provide credit to Indian business enterprises at the lowest possible costs taking into account the cost of money to the Corporation, the necessary reserve of the Corporation and the technical and other assistance available to the borrower.

(C) The Corporation is authorized to guarantee all or any part of the principal and interest of any loan made by private lending institutions if the purposes meet the requirements specified in subsection 102 (b).

(D) For purposes of providing long term capital and working capital to Indian business enterprises, the Corporation is authorized to purchase or make commitments to purchase up to 25 percent of the equity or ownership interest in such enterprises if it is determined, after a full and complete appraisal of the project and related business plans, that such investment does not expose the corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development. In those instances where the Corporation has made an equity investment in an Indian business enterprise the Corporation shall supervise or participate in the management of such enterprises where appropriate.

Section 103- General Powers

This section defines the general powers of the Corporation to include:

(A) lease, purchase, accept gifts or donations, own, hold, improve, use, sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any property, real, personal or mixed or any interest therein;
(B) sue and be sued and go to court;
(C) represent itself, or to contract for representation in all judicial, legal, and other proceedings;
(D) make use and pay for services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this act;
(E) use the United States mails on the same terms as the

(F) participate with other financial institutions, agencies, instrumentalities, trusts or foundations in loans or guarantees under this Act;
(G) accept guarantees from other agencies for which loans made by the Corporation may be eligible;
(H) establish one or more regional offices as needed;
(I) buy and sell
  (1) obligations of, or instruments insured by the United States or any agency or instrumentalities thereof, or
  (2) securities backed by the full faith credit of any such agency or instrumentality;
(J) make investments;
(K) establish offices within the Corporation as may be necessary including offices for: Project Development, Technical Assistance and Training, Project Evaluation and Auditing, Fiscal Management and any other offices which the Board of Directors deems necessary;
(L) exercise all other lawful powers necessarily related to the establishment of the Corporation in order to carry out the provisions of this Act.

Section 104 - Board of Directors

The powers of the Corporation are vested in a twelve member Board of Directors. The twelve members will represent:

A. one officer of the United States Government;
B. six individuals who represent the Indian tribes which are shareholders in the corporation;
C. the President of the Corporation, and;
D. four shareholders in the Corporation.

The initial members of the Board of Directors would be appointed by the President and confirmed by the Senate. The President would have to appoint individuals with experience in private business, development or commercial financing. The Indian tribe representatives must be Indian and can only be appointed after the President has consulted with and received nominations from such tribes. No more than five of the ten members of the Board of Directors can be members of the same political party.

The term of office for initial members of the Board of Directors would expire at the start of the first annual meeting of the shareholders of the Corporation. This first meeting will be held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to Indian tribes.

The term of office for any members of the Board of Directors will be five years. Any vacancy created by the expiration of the term of office will be filled in an election where by an individual is elected by the shareholders. If a vacancy occurs prior to the expiration of the term of office the President shall appoint an individual, with the consent of the Senate, to fill the vacancy. A member of the Board by be removed from office by the President only for neglect of duty or malfeasance in office.

A member of the Board by be removed from office by the President only for neglect of duty or malfeasance in office.

The Board of Directors will be responsible for establishing the policies of the Corporation and supervising the management of the Corporation.

Section 105 - Officers and Employees
The Board of Directors shall appoint a President of the Corporation who shall have the responsibility for carrying out the policies and functions of the Corporation. The President will also have the authority to appoint and fix the compensation and duties of its officers and employees.

Section 106 - Conflicts of Interest and Financial Disclosure
The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal Agency. No member of the Board of Directors shall vote on any matter pending before the Corporation if there is a conflict of interest. Action by any member contrary to this prohibition shall be cause for removal of that member. The only time this would not apply is if the member first advises the Board of Directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest. The Board of Directors would determine by majority vote if the financial interest is too remote or too inconsequential to affect the integrity of such members services for the Corporation.

Section 107 - Annual Meetings
This section states that the Corporation shall hold an annual meeting of its shareholders which must be open to the public. Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting. At least 30 days notice of the time and place of the annual meeting is required.

Section 108 - Tax Status
This section states that the Corporation, its franchise, capital, reserves, surplus, income, and intangible property will be exempt from all taxation. Real property owned in fee by the Corporation shall be subject to taxation. The Corporation and its employees shall be subject to payroll and employment taxes and any bond, note or other evidence of indebtedness, issued by the Corporation, shall be exempt from all taxation.

Section 109 - Reports to Congress
The Board of Directors must report annually to the appropriate committees of the Congress

Section 110 - Conforming Amendments
This section amends title 31 of the United States Code by inserting "the Indian Development Finance Corporation" after "the National Consumer Cooperative Bank" in three paragraphs. In

TITLE II - CAPITALIZATION

Section 201 - Issuance of Stock

The Corporation is authorized to issue shares of common stock, to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors. At least 60 percent of the voting common stock will be owned by Indian tribes. No person or tribe may own more than 5 percent of the total value of all outstanding voting common stock of the Corporation at any time.

The Corporation will offer a total of 100,000 shares of common stock at $250 per share to Indian tribes and 100,000 shares of common stock to the United States for the benefit of Indian tribes. One year after the common stock offer is made the Corporation will again have the opportunity to offer 80,000 shares of preferred, nonvoting stock for sale to the United States at $500 per share.

The Secretary may use funds held in trust to purchase such number of shares of stock as the governing body of the tribe may request the Secretary to purchase on behalf of the tribe. The Secretary must vote, sell or exchange any shares of stock upon the request of the tribe on whose behalf such shares were purchased.

Section 202 - Borrowing Authority

The Corporation is authorized to issue unconditionally guaranteed bonds, notes, rates and other evidences of indebtedness. The aggregate amount of obligations issued shall not exceed $50,000,000. An obligation may be issued only if the Secretary of the Treasury approves of the terms and conditions of such obligation.

If the Corporation is unable to pay the principal or interest due on any obligation the Secretary of the Treasury would pay the amount due on the obligation out of funds in the Treasury not otherwise appropriated. The amount paid by the Secretary of the Treasury shall become an obligation of the Corporation that bears interest at the same rate borne by the obligation with respect to which such payment was made and is payable under the same terms..

The Secretary would loan $35,000,000 to the Corporation for the purpose of providing initial operating funds. The terms of the loan would: provide for a repayment period of at least 40 years at a rate of interest not to exceed 1/2 of a percent over the average rate on seven year treasury bills; provide for the suspension of payment of the interest and principal during the 10 year period beginning on the date the agreement is executed.

TITLE III- AUTHORIZATION OF APPROPRIATIONS

Section 301 - General Operational Expenses

In addition to amounts authorized to be appropriated under Section 302, $2,000,000 are authorized to be appropriated for this Act for fiscal year 1988 and such sums as may be necessary for fiscal years 1989 and 1990.

Section 302 - Authorizations for Specific Provisions

There are authorized to be appropriated for fiscal year 1988, $25,000,000 for the purpose of carrying out the provisions in section 201 (c)(2).

There are authorized to be appropriated for the purpose of carrying out the provisions of section 201 (d)(3) $20,000,000 and $20,000 000 for the succeeding fiscal year.

There are authorized to be appropriated for fiscal year 1988, $35,000,000 for the purpose of carrying out the provisions of section 202 (c).

3/12/87

PREPARED STATEMENT OF RAYMOND C. BROWN, TREASURER,
UNITED INDIAN DEVELOPMENT
ASSOCIATION

Mr. Chairman and members of the Committee, thank you for this opportunity to appear before the Senate Select Committee on Indian Affairs.

My name is Raymond C. Brown, I am an enrolled Washoe Indian originally from the State of Nevada. I am here in my capacity as the Treasurer of the United Indian Development Association (UIDA) and as a Vice President with First Interstate Bank of California. I also serve as Vice Chairman of the Board and Chairman of the Loan Committee for the FirstAmerican California Business and Industrial Development Corporation, a subsidiary of UIDA.

UIDA is a national not-for-profit management consulting organization formed in 1969 to assist American Indians to achieve self-sufficiency through business and economic development. UIDA has acquired over $100 million in financing and business opportunities for Indians while starting up 338 new businesses and creating 2,024 new jobs. This has been accomplished with a failure rate of less than 5%.

UIDA has (5) offices in the west and operates the National Center for American Indian Business and Economic Development. The National Center provides technical assistance for Indian

enterprises located on reservations. Our national and regional programs are demonstrating that Indian tribes and businesses can be successful given adequate capital and technical assistance.

Problem of Inadequate Self-Sustaining Private Sector Development on Indian Reservations: UIDA's Perspective

Reservation Indian communities in the United States are characterized by low economic activity with few Indian business owners/operators. The lack of meaningful Indian participation in the free enterprise system contributes directly to high unemployment, underemployment, and other socio-economic problems on and off reservations.

1. Relatively Few Indian Businesses. There are not enough Indian-owned enterprises providing jobs and income to Indians. Also start-up and existing businesses need financial resources and management and technical support to survive and expand. According to the 1982 Survey of Minority-owned Enterprises, the number and gross receipts of American Indian businesses are behind what they are for other minority groups on a per capita basis. Figure 1, which follows, highlights this discrepancy.

Figure 1

FIRMS OWNED BY HISPANICS, BLACKS, ASIANS, OTHER GROUPS, AND AMERICAN INDIANS: 1982

Minority	Firms (Number)	Receipts
Hispanics	248,141	$ 14,976,337 billion
Blacks	339,239	12,443,572 billion
Asians and Other Groups	240,799	17,265,399 billion
American Indians/Alaskans	14,843	646,749 million
TOTAL	843,022	45,332,057 billion

The above data indicate that American Indian ownership represents 1.8% and gross receipts represent 1.4% of that for other minority businesses in the United States. Therefore, to be on parity with other minority firms, a 4000% increase in Indian business ownership is needed. The future impact is ominous as American Indian business ownership has increased less from 1972 to 1982 compared with the increase, for example, for businesses owned by Asian and other minority groups during the same period.

Indian firms are, however, engaged (but under-represented) in all industries including: Construction; Manufacturing; Transportation and Utilities; Wholesale Trade; Retail Trade; Finance; Insurance; Real Estate; and selected human services. Figure 2 on the next page also depicts the percentages of these major business areas, based on the most recent data from the U.S. Bureau of Census. Existing Indian business firms can be a greater

Figure 2

NUMBERS AND GROSS SALES OF INDIAN OWNED FIRMS, 1982

Type of Activity	Indian Firms With Paid Employees			Indian Firms Without Paid Employees		All Indian Firms		
	No. Firms	Avg. No. Employees	Average Gross Sales	No. Firms	Average Gross Sales	No. Firms	%	Average Gross Sales
Agricultural, services, forestry, and fishing	73	1.8	$ 93,932	2,745	$ 6,056	2,818	19	$ 8,332
Mining	12	3.2	395,667	60	59,967	72	0.5	115,917
Construction	274	3.3	201,701	1,552	18,541	1,826	12	46,025
Manufacturing	68	19.9	1,095,456	246	13,862	314	2	248,092
Transportation and public utilities	79	2.9	221,165	500	28,144	579	4	54,480
Wholesale trade	19	4.5	628,105	61	39,180	80	0.5	179,050
Retail trade	445	3.5	248,501	2,657	20,639	3,102	21	53,327
Finance, insurance, and real estate	27	2.2	185,667	280	9,039	307	2	24,573
Selected services	382	6.6	223,636	3,897	13,630	4,279	29	32,378
Other industries	84	1.7	164,440	1,381	16,860	1,465	10	25,322
All industries	1,462	4.9	279,081	13,382	17,840	14,843	100	43,570

Source: U.S. Census: 1982 Survey of Minority-Owned Business Enterprises, Asian Americans, American Indians, and Others.

source of supplies and services, as well as employment opportunities for Indian communities given adequate capital and technical assistance.

2. Economic Plight of Indian Reservations. Further, American Indian communities are characterized by stagnant economies, inadequate human services, and underdeveloped capabilities to promote sustained business development on their own. Typical indicators of economic stagnation include:

   - high unemployment and low labor force participation rates;
   - high proportions of unskilled laborers in the labor force;
   - limited managerial talents for directing local developing enterprises;
   - limited local ownership and operation of entrepreneurial ventures;
   - insufficient investment capital to support business development projects; and
   - lack of competencies in ways of obtaining private sector technical and financial involvement.

In contrast to the above indicators of economic plight, Indian tribes have an impressive array of natural and human resources. Figure 3 on the next page summarizes some of those natural resources - on which current and future business development can capitalize, given that adequate capital and technical assistance becomes available.

Figure 3

INDIAN TRIBES POSSESS 51.8 MILLION AREAS OF LAND

AMERICAN INDIAN NATURAL AND HUMAN RESOURCES

In contrast to their economic plight, Indian tribes have an impressive array of natural and human resources on which current and future business development can capitalize.

- Indian tribes possess 51.8 million acres of land
- 5.3 million acres of commercial forest on Indian land
- 2.5 million acres in crop area
- 44 million acres in range and grazing land
- 4% of U.S. oil and gas reserves
- 40% of U.S. uranium deposits
- 30% of known western coal reserves
- $1.5 billion in royalty payments held in trust
- 1.4 million people, one-third under 15 years of age

3. Capitalization Obstacles for Indian Businesses. The overriding business development problem on Indian reservations is the lack of capital and the historic inability of reservation projects and privately-owned Indian enterprises to access financial markets. The "capital" problems that reservations face essentially are several and include:

- limited access to capital for business development;
- the trust status of property and jurisdictional impediments of securing credit for such developments;
- the perceived, and often superficial, impediments relating to tribal instability and inexperienced management; and
- few sources of long-term business development financing.

S.721 - The Indian Development Finance Corporation is a business financing vehicle whose time has arrived. Privately capitalized and funded business-finance development corporations are becoming an increasingly popular vehicle for aiding small firms by providing funds not readily available from conventional sources. In general, they promote, aid, and through the united efforts of the institutions and corporations which become members, develop and advance industrial and business prosperity. The equity is raised by the sale of stock to the business and financial communities. Banks and insurance companies, as members, supply the operating money by taking notes. The monies are pooled and loaned out, generally on

a long term, risk-oriented secondary basis, supplementing commercial bank financing. These are the same goals that S.721 will achieve for Indians.

At present there are 29 active state business finance development corporations in 24 states. Many have operated for over 20 years, but several have been "recycled" in recent years with new management and more imaginative lending policies. In Massachusetts, for example, Massachusetts Business Development Corporation, formed in 1953, was reorganized in 1979, and has gone from an annual average of about 8-10 loans totaling $2,500,000 to $3,000,000, to 1983 when, to date, 32 loans totaling $11,097,000 have been approved.

Business finance development corporations work closely with other financing agencies--both public and private--to do innovative loan packaging. In Massachusetts, many loans have been committed which otherwise would never have been done. Some business finance development corporations have been certified by the SBA to make 503 loans, many have their own Small Business Investment Corporations, and almost all work with the SBA and other government agencies in their lending programs.

Conclusions and Recommendations

Many of the businesses we serve experience difficulty obtaining capital to grow. Many of the tribal Indian businesses have insufficient equity and collateral to qualify for conventional bank lending. Banks are reluctant to lend to

businesses on reservations as Indian law tends to restrict a lender's ability to collect in the event of a loan default. We recently surveyed 121 clients and found that over 60% of these Indian firms who had attempted to borrow money could not obtain a loan at all or could not obtain a loan at reasonable terms.

We at UIDA believe that the Indian Development Finance Corporation (IDFC) can lend to Indian-owned businesses successfully. We have a successful track record packaging Indian deals, so we know how to deal with the problems of high debt-equity ratios and limited collateral. We have in-depth information on a substantial number of the potential borrowers, many of who are clients that we have helped get into business. Since we specialize in Indian business lending, we generate a sufficient flow of loan proposals, which most commercial banks cannot, to maintain and keep current the special expertise required to lend to tribal enterprise and reservation-based businesses.

After a careful review of alternative financial institutions, we wholeheartedly support the IDFC, a type of financial institution somewhat unique, because it has the high leverage, high risk and utilizes consulting in loan servicing. However, IDFC, unlike banks which make primarily short-term loans, will specialize in long-term debt which is more appropriate to the needs of Indian startup and growing companies on reservations.

Based upon our market and financial analysis of California and Arizona we project a minimum loan volume of $2.25 million in the first year, $3.0 million in the second year, and $3.6 million each year thereafter for such an institution.

We recommend that the directors of the IDFC include private sector and banking representatives. The officers must have extensive backgrounds in economics and finance. We further recommend that 1) IDFC have a 15 member board to include 3 outside directors who fit the above criteria, 2) that Congress consider redirecting current appropriations for Indian economic development financing as a method to authorize S.721, 3) to the greatest extent possible use other independent financial intermediaries to perform specialized financial services, and 4) that technical assistance and training to performed on a contract basis independent of the IDFC.

We appreciate the opportunity to apply for investment capital from IDFC for our financial institution, a Business and Industrial Development Corporation (BIDCO), which will enable us to assist Indian business development throughout the western states as an intermediary to the IDFC.

Our organization is based on the principle that we, as Indian people must initiate the actions needed to solve our problems. Indian-owned enterprises will help us achieve economic independence, both on and off the reservations, and will help in arresting tendencies toward dependency, chronic unemployment, and

community deterioration. An emerging Indian entrepreneurial spirit is contributing to a new tradition of self-help and success for American Indians.

Our BIDCO serves as a vehicle to attract private capital for Indian economic development, building on capabilities of Indian entrepreneurs to expand their businesses and create new ones, providing new employment and new ownership opportunities. IDFC, by attracting public and private capital as well, will also serve as a catalyst for promoting public-private partnersnips leading toward economic self-sufficiency for Indian communities.

Thank you. I would be more than happy to answer your questions.

PREPARED STATEMENT OF JOSEPH BRESETTE, EXECUTIVE DIRECTOR, GREAT LAKES INTER-TRIBAL COUNCIL, INC. LAC DU FLAMBEAU WI

Mr. Chairman, members of the Committee. Great Lakes Inter-Tribal Council, Inc. is pleased for this opportunity to present the views of its member Tribes on S-721, the Indian Development Finance Corporation Act.

Great Lakes Inter-Tribal Council, Inc. commends the efforts of the Chairman to address a major constraint to reservation development, the severe shortage of available financial assistance. We also fully support the expressed intent of this proposed legislation, "To provide for and promote the economic development of Indian tribes by furnishing necessary capital, financial services, and technical assistance to Indian owned business enterprises (etc.). We do however, have some comments and concerns which we hope will be considered by this Congress in its deliberations and designing of the final version of the Act.

COMMENT: **It is the belief of Great Lakes Inter-Tribal Council, Inc. that this proposed legislation must be viewed as a small component of a broad-range/ comprehensive economic development assistance program for Indian Tribes.**

Assistance designated to promote the development of a "private sector" reservation economy is both important and badly needed. However, the amounts authorized as well as their identified uses, will not nearly address the need. Other sources of Federal development assistance must be expanded.

Tribal access to U.S. Department of Housing and Urban Development sources of community development assistance (CDBG, UDAG & housing) need be enhanced. Economic Development Administration, Small Business Administration, and Farmers Home Adminstration programs must be both expanded and better targeted to meet the needs of Indian people and Tribes. Bureau of Indian Affairs assistance programs under the Indian Finance Act, must be expanded and better designed to be responsive to tribal development needs.

COMMENT: **Tribal government control over all development occuring within its jurisdicational area, must be maintained.**

The proposed legislation, as drafted, doesn't adequately define neither the application process nor the roles of business, Tribe and corporation in securing and using available assistance.

We agree the recipients must be capable of using the assistance wisely and effectively. A better definition is needed to how the corporation will determine if the "Indian Enterprise has a **sound** organizational structure".

COMMENT: **It appears this concept may be an attempt to address problems in the operation of the AINB (American Indian National Bank), that is to secure tribal investment-deposits and to provide for more flexibility in its operation.**

If true, we have no problem with the intent. We do however desire to see the proposed corporation operate in a fair-impartial-professional manner. Requests for assistance must be processed based on clearly defined criteria designed to insure merit rather than favoritism.

COMMENT: We feel the proposed corporation has to be responsive regionally to those Tribes who decide to participate.

Whether true or false, there is a feeling among many Tribes that sources of financial assistance have a bias for the southwest. To eliminate this perception, it may be necessary to establish "Regional Centers". If authorized, then cost of operation must be considered in the decision making process. We do not favor the creation of a large and expensive bureaucracy to maintain the corporate operation.

Great Lakes Inter-Tribal Council, Inc. feels this proposed legislation is potentially a very positive action of the Federal government. It must be viewed in the context of being a component to a comprehensive program of development assistance. The criteria governing its operation must be objective, well defined, and easily understood. The Corporation must be fair and impartial, and not be swayed by political pressure. If these things happen, then we see no reason why Indian Tribes will not invest in, then utilize, these much needed services.

ADOPTION

On April 16, 1987, the Great Lakes Inter-Tribal Council, Inc. Board of Directors at their regularly scheduled monthly meeting, adopted this position paper by a unanimous vote of the Tribes present.

John B. Th

Joseph Bresette, Executive Director

PREPARED STATEMENT OF GAYLON FRANKLIN, SECOND CHIEF,
SAC AND FOX TRIBE OF INDIANS
OF OKLAHOMA

Having reviewed the provisions of Senate Bill 721 (Indian Development Finance Corporation Act), I am pleased to offer the following comments and observations on behalf of the Sac and Fox Tribe of Indians of Oklahoma. In general, this is a good bill, and with some relatively minor modifications could, in conjunction with Senate Bill 788 (To Encourage Indian Economic Development), have the most significant positive impact upon our Tribal members and others within our jurisdiction of any legislation since the Indian Reorganization Act (Act of June 18, 1934, 48 Stat. 984) and its amendment, the Oklahoma Indian Welfare Act (Act of June 26, 1936, 49 Stat. 1967), enacted in the 1930's.

The Sac and Fox Tribe has, for many years actively exercised and streamlined its governmental processes, and worked with private sector entities in an attempt to become an attractive jurisdiction for the investment of private capital and conduct of private business enterprises. At the beginning of this process, our Tribe reviewed our available economic resources and concluded that, because of our small Tribal land base due to the forced allotment of our lands, lack of available capital, lack of business management skills, the problems inherently associated with risking public (Tribal) funds in business ventures, and other associated problems, it would be much more beneficial to our people for our Tribe to act in the economic development arena as a good government as opposed to attempting to

transpose what is after all a political entity (the Tribe) into a business entity.

However, the lack of available private or other capital must be remedied, and this Bill may provide the mechanism for doing so. The one major deficiency in the Bill is the lack of ability to issue insurance for Tribal revenue bonds. If that problem is resolved, this Bill would be very useful. In addition, we have the following suggestions:

1. A Section should be added to the Bill under a new Title to read: INDIAN GOVERNMENTS TREATED AS STATES FOR SECURITIES REGISTRATION PURPOSES -- Indian Tribal Governments, and their political subdivisions, shall be treated as States for purposes of Section 77c(a)(2) of Title 15, United States Code.

Explaination: The Sac and Fox Tribe has been involved in a tax exempt bond issue through one of its political subdivisions, and has found that the registration of said bonds, or the obtaining of bank letters of credit for credit enhancement purposes constitutes a significant impediment to the use of private capital for tribal governemntal purposes. Both registration, and obtaining a bank letter of credit -- currently the only method of avoiding registration -- are prohibitively expensive and time consuming. The suggested amendment would exempt Tribes and their political subdivisions from registration requirements to the same extent that states are exempt, and allow the Tribes to use the more cost effective methods of municipal bond insurance, pledges of tax or other revenue, project mortgages, and other credit enhancement devices to provide credit support for its bonds and other obligations. Since Tribes are treated

as states for income tax purposes on their obligations, they should be accorded similar treatment under the securities laws.

2. In the proposed new title, the following sections should be added:

Section 2: Taxes By Tribes

The Indian Self-Determination Act (Act of January 4, 1975, P.L. 93-638, 88 Stat. 2203) is amended by adding thereto the following new Section 8.

§ 8. Taxes By Tribes. The Federal and State Courts shall not enjoin, suspend or restrain the assessment, levy or collection of any Tax under Tribal law where a plain, speedy and efficient remedy may be had in the courts of such Tribe.

Explanation: One of the primary reasons for Indian Tribes to engage in economic development is the development of a Tribal tax base without which Tribes will not have the revenue to replace money lost in federal budget cuts or to improve the governmental capacity. The proposed section is based upon 28 U.S.C. § 1341 and the ability to collect taxes uninterrupted by court suits is even more important for the Tribes than for the states which have the protection on their revenues of 28 U.S.C. § 1341.

Section 3: Reassumption of Tribal Jurisdiction.

The Indian Self-Determination Act (Act of January 4, 1975, P.L. 93-638, 88 Stat. 2203) is amended by adding thereto the following new Section 9.

§ 9. Reassumption of Jurisdiction by Tribes.

(a) An Indian Tribe shall have jurisdiction exclusive as to any state over the reservation of such Tribe and all persons and property

therein except where such jurisdiction is otherwise vested in the state by existing Federal laws.

(b) Any Indian Tribe which may have become subject to state jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78) or pursuant to any other Federal law, may reassume jursidiction over its reservation and all persons and property therein.

(1) Before any Indian Tribe may reassume jurisdiction over it reservation, such Tribes shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction. The submission of such petition shall not be construed as an admission that the state has jurisdiction over the Tribe's reservation by any court.

(2) In considering the petition and feasibility of the plan of a Tribe under subsection (b)(1) the Secretary may consider, among other things:

(i) whether or not the tribe mainains a Tribal Court and published compilation of Tribal laws, or other alternative provisions for assuring that the persons who will be affected by the reassumption of jurisdiction by the Tribe will have access to all Tribal law affecting them,

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe,

(iii) the population base of the tribe, or distribution of the population is homogeneous communities or geographic areas

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(3) In those cases where the Secretary determines that the jurisdictional provisions of section 9(a) of this Act are not feasible, he shall

(i) (A) State his objections in writing to the Tribe within sixty days,

(B) provide to the extent practicable assistance to the Tribe to overcome his stated objections, and

(C) provide the Tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised, or

(ii) accept partial retrocession which will enable Tribes to exercise exclusive jurisdiction over limited community or geographical areas without regard to the reservation status or the area affected.

(4) If the Secretary approves any petition under this subsection, the Secretary shall publish notice of such approval in the Federal Register, and shall notify the affected state or states of such approval. The Indian Tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval.

(c) The United States, every State, every territory or possession of the United States, and every Indian Tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe to the same extent that such entities give full

faith and credit to the public acts, records, and judicial proceedings of any other entity.

(d) (1) The provision of the Act of April 11, 1968, P.L. 90-284, Title II, Section 202(7) (88 Stat. 77) as amended which limit the amount of fine and term of imprisonment which may be imposed by Indian Tribes shall not apply to any Tribe which, by affirmative Tribal legislation consents to the following conditions:

(i) all Tribal legislation and court judgments, including decisionsl of the Tribal Court of last resort will be made available to the public in a manner deemed adequate by the Secretary of the Interior, or filed for record at the office of the Superintendent at the Bureau of Indian Affairs Agency having administrative supervision over the reservation, and

(ii) only attorney judges shall participate in the trial of criminal cases in which the possible punishment exceeds the limits contained in section 202(7) of the Act of April 11, 1968, P.L. 90-284, Title II (88 Stat. 77) as amended, and the jury in such cases shall be open to all bona fide residents of the reservation equally and

(iii) any fine or imprisonment imposed shall not exceed that which is provided for the same or substantially similar offense under the laws of the state in which the Tribe's reservation is located.

(E) For the purpose of this Section, the term "reservation" shall mean Indian Country as defined in section 1151 of title 18, United States Code, and any lands, not covered under such section title to which is held by any Indian tribe or agency or political subdivision of such Tribe, or by the United States in trust for any individual

Indian, or by any Individual Indian subject to a restriction by the United States against alienation.

Explanation: Because of the commitment of the Sac and Fox Tribe to the creation of a legal infrastructure conducive to private sector investment, we have significant experience and knowledge of the problems associated with attracting private capital to the Indian Country. Our experience has shown that the single most significant impediment to private sector business development within our jurisdiction is the continuous attempts of various state agencies -- most often without affirmative state legislative direction -- to intrude into the Indian Country and attempt to impose state regulatory authority and state taxes upon businesses located therein even in the face of Federal treaty commitments and other laws guaranteeing the Tribe the right of self-government. In other words, private sector firms contemplating investment in the Indian Country view this situation as one in which they chose to invest in a lawsuit with the state over such regulation and taxation or bear the burden of Federal, Tribal, and state regulation and taxation. Most private firms will not invest in such cases, and may not do so even with the federal financial incentives offered by this Act.

In addition, Indian Tribes are forced by such circumstances to expend a tremendous amount of their energy and financial resources simply to maintain, in litigation, their right to self-government, a right the United States has repeatedly promised the Tribes in return for enormous land sessions. The Tribes must be able to create a viable private sector tax base in order to upgrade and maintain governmental services, and can do so much more effectively if they

operate in an atmosphere in which their energy and resources may be used to build rather than being expended in defensive actions. Based upon the example and precedent for such legislation found in the Indian Child Welfare Act, Act of November 8, 1978, P.L. 95-608, 92 Stat. 3069, and the Indian Self-Determination Act, Act of January 4, 1975, P. L. 93-638, 88 Stat 2203, the suggested amendment would eliminate this impediment and clarify that states are not to interfere with the exercise of legitmate governmental prerogatives of the Tribe within its Indian Country.

Section 4: Acquisition of Trust Lands.

The Indian Self-Determination Act (Act of January 4, 1975, P.L. 93-638, 88 Stat. 2203) is amended by adding thereto the following new Section 10.

§ 10. Acquisition of New Trust Lands.

(a) The Secretary of the Interior shall, upon application, accept into trust, on behalf of any Indian or Indian Tribe, any interest in lands, water rights, or mineral or surface rights to lands acquired by such Indian or Indian Tribe through purchase, relinquishment, gift, exchange, inheritance, or assignment, notwithstanding any purchase money mortgage thereon, within existing federal Indian reservations or former reservations in Oklahoma, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

(b) Title to any such lands or rights acquired pursuant to this Section shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired,

and such lands or rights shall be Indian country exempt from state and local taxation.

Explanation: The acquisition of Tribal and individual trust lands is crucial to Indian economic development. Although the Secretary has discretionary authority to accept lands in trust whether within or without existing reservations pursuant to Section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 985 the provision after which the suggested amendment is modeled) such acquisitions within a Tribe's jurisdictional area should be mandatory upon request, particularly when the acquisition can be accomplished without expenditure of trust funds. While this amendment would not eliminate Secretarial discretion on the expenditure of trust funds, it should remove barriers to land acquisition within a Tribe's jurisdictional area currently imposed by administrative regulations and bureaucratic practice. The unquestioned ability to acquire lands within the jurisdictional area in trust will eliminate another barrier to economic development.

Having reviewed the provisions of Senate Bill 788 (To Encourage Indian Economic Development), I am pleased to offer the following comments and observations on behalf of the Sac and Fox Tribe of Indians of Oklahoma. In general, this is a good bill, and with some relatively minor modifications could have the most significant positive impact upon our Tribal members and others within our jurisdiction of any legislation since the Indian Reorganization Act (Act of June 18, 1934, 48 Stat. 984) and its amendment, the Oklahoma Indian Welfare Act (Act of June 26, 1936, 49 Stat. 1967), enacted in the 1930's.

The Sac and Fox Tribe has, for many years actively exercised and streamlined its governmental processes, and worked with private sector entities in an attempt to become an attractive jurisdiction for the investment of private capital and conduct of private business enterprises. At the beginning of this process, our Tribe reviewed our available economic resources and concluded that, because of our small Tribal land base due to the forced allotment of our lands, lack of available capital, lack of business management skills, the problems inherently associated with risking public (Tribal) funds in business ventures, and other associated problems, it would be much more beneficial to our people for our Tribe to act in the economic development arena as a good government as opposed to attempting to transpose what is after all a political entity (the Tribe) into a business entity.

We applaud this act because it is one of the few economic development legislative proposals which appears to treat Indian Tribes as the governments they are, and provides the federal tax incentives necessary to attract significant private investment in our relatively undeveloped, out-of-the-beaten-path areas. Based upon our previous exprience as a Tribe in this area, our commitment to this approach, and our obligation to provide excellent governmental services to all persons coming within our Tribal jurisdiction we offer the following suggestions:

Colville Confederated Tribes

P.O. Box 150 - Nespelem, Washington 99155 (509) 634-4711

PREPARED
STATEMENT OF LOU STONE
CHAIRMAN, LEGISLATIVE COMMITTEE
COLVILLE BUSINESS COUNCIL

Mr. Chairman, the Business Council of the Confederated Tribes of the Colville Reservation appreciates the thought and effort that went into preparing the Indian Development Finance Corporation Act (S.721). Strong tribal and private sector economies are essential if Native American peoples are to regain fully their independence and self-reliance. Certainly, the Indian Financing Act and the Indian Tribal Governmental Tax Status Act are making important contributions to reservation economies, but much more needs to be done.

We support the creation of a sound Indian development finance corporation to provide capital, financial services, and technical assistance to tribally-owned and privately-owned business enterprises. S.721 is a good beginning, but it can be improved. Tribes should be given ample time to review its provisions and be encouraged to comment on them.

My testimony will focus on a few major areas of concern.

General Comments

Nowhere in its provisions does S.721 suggest that enactment will lead to termination of the economic development, business enterprise, and credit and finance activities of the Bureau of Indian Affairs. Nevertheless, we are deeply concerned that the bill, if enacted, will encourage the Administration to terminate those activities. The Federal government has a continuing obligation to assist in the development of viable reservation economies. That obligation cannot be delegated to a mixed-ownership corporation and forgotten.

One of the most important features of the Indian Financing Act is the authority to make grants to Indian tribes to capitalize business enterprises. Many Indian business enterprises, without capitalization through Federal grants, would be doomed from the start owing to poor debt-to-equity ratios and unsupportable costs for debt service.

Additionally, the Federal government should remain the lender or guarantor of last resort. It is in a better position to assume a higher level of credit risk in the discharge of its fiduciary obligations than a finance corporation which has legal obligations to its shareholders. The Government, unlike a corporation, can justify taking a higher level of risk since it may recover some of its credit losses through taxes on employment and on certain kinds of business activity. Furthermore, the Government, unlike a corporation, can consider avoided costs for general assistance and other transfer payments to justify the higher level of risk.

We concur with the bill's finding that existing Federal efforts have fallen far short of their objectives owing, in part, to lack of coordination, arbitrary project selection criteria, and politicalization of the delivery system. Yet, nothing in the legislation inhibits these same problems from developing in the efforts of the corporation. The experience of the American Indian National Bank testifies to this. We urge the Committee to study ways in which these problems can be avoided through limitations on the discretion of the corporation and by other means.

Section Analysis

Section 3(a)(5)(d)(ii) vests too broad discretion in the Corporation to determine whether or not an off-reservation Indian business enterprise is "directed at contributing to the economy" of a reservation. Congress should establish standards in this regard which must be met before the Corporation may guarantee a loan to, or take an equity or ownership position in, an enterprise.

Section 102(d)(2), which vests authority in the Corporation to supervise or participate in the management of Indian business enterprises in which it takes an equity or ownership position, could undermine the "self-determination, self-reliance, and independence" which the bill espouses.

Section 201(c)(1) vests too broad discretion in the initial Board of Directors of the Corporation to determine the formula on the basis of which the number of shares of stock available for purchase by each tribe would be determined; and this discretion, in turn, would determine the matching number of shares the Secretary must purchase, with appropriated funds, on behalf of an investing tribe under section 201(c)(2)(B). Congress itself should establish more explicit standards for deciding the formula for determining what number of shares should be made available for purchase by each tribe and, thus, for determining the allocation of appropriated funds for the Secretarial purchase on each tribe's behalf.

Section 201(c)(2)(B) unfairly discriminates against tribes that can afford to purchase little or no stock under section 201(c)(1), since the matching Secretarial purchases on their behalf will be limited by the amount each tribe can afford to invest. This inequity could be corrected, at least in part, if the bill were to be amended to require the Secretary or the Corporation to lend moneys to any tribe which would, without such loan, be unable to purchase an equitable number of shares of stock under the formula referred to in section 201(c)(1) and thus qualify for an equitable matching Secretarial purchase on the tribe's behalf.

Section 201(c)(2)(B), when read together with section 201(e)(4), appears to make it possible for tribes, using trust funds to purchase stock under section 201(c)(1), to reap immediate windfall profits without committing their funds to long-term investment in the Corporation. To gain this windfall, a tribe would first purchase stock with trust funds. This would obligate the Secretary to purchase an equal number of shares on behalf of the tribe. Once the Secretarial matching purchase has been consummated, the tribe, to assure an immediate 100% profit on its original investment, need only to direct the Secretary immediately to sell the shares purchased with its trust funds, which the Secretary is obligated to sell for the tribe under section 201(e)(4). Windfalls may also be possible even if a tribe uses funds other than trust funds, but the tribe would have to find its own market for the shares it wishes to sell--either another tribe or the Corporation.

Section 201(e)(1), authorizing the use of trust funds to purchase stock, represents a radical departure from past Federal policy. In the past, the Government could invest trust funds only in instruments which assured that a tribe would earn income on its funds. There is no guarantee that the Corporation will earn a profit and no requirement that some portion of the Corporation's profits, if any, be distributed as dividends to shareholders. If the final bill retains the authorization to use trust funds to purchase stock, Congress should establish a policy on dividends.

Section 201(e)(1) may have the effect of overriding some tribal constitutions and judgment fund distribution plans. It provides that a tribal governing body may elect to invest the tribe's trust funds in stock of the Corporation--notwithstanding any other law. It is our understanding that the constitutions of some IRA tribes reserve to the tribal membership decisions on the use of trust funds. The use of the funds to purchase stock in a mixed-ownership corporation, therefore, might be construed by the membership as an unauthorized use. Such use could also be construed as a violation of some tribes' judgment fund distribution plans.

Section 202(a)(2) does not make clear the limits on the Corporation's borrowing authority. It identifies "the paid-in capital of the Corporation" as a factor in determining this limit. In your floor statement you indicate a limit of $500,000,000, but this apparently is only the limit initially established by the sale of certain stock under section 201(c). If the preferred stock referred to in Section 201(d)(1) is also considered paid-in capital, the borrowing authority would rise by another $400,000,000 once the Secretary purchases the preferred stock. If the Corporation exercises its discretion to issue additional stock under section 201(a), then the Corporation's borrowing authority is without Congressional limitation. Since tribal and Federal funds would be invested in the Corporation, it would be prudent for Congress to impose more stringent limits on the Corporation's borrowing authority.

Section 202(b)(1), which authorizes the Corporation to issue obligations which are fully and unconditionally guaranteed as to principal and interest by the United States, should be amended to require the Corporation first to offer such obligations to tribes.

In general, S.721 fails to treat a number of important issues and vests excessive discretion in the Board of Directors. For example, there is no apparent limit on the number of shares of capital or other stock that may be issued. Congress should establish such limits or require the approval of the Secretary of the Treasury before the Corporation may issue any stock other than the stock referred to in section 201(c) and section 201(d).

There are no limits on the total amount of credit that can be extended or on the amount of credit that can be allocated to a business enterprise as a percentage of total credit. Congress should limit the Corporation's discretion in order to protect the tribal and Federal investment and assure that credit is made available on a broad and an equitable basis.

We thank you for sponsoring this important measure and appreciate your long-term commitment to making a brighter future for American Indian communities.

Tureen and Indian delegation being greeted by President Carter

Managing Indian Assets

Tom Tureen '66 and Daniel Zilkha '64 are helping scores of tribes take charge of their financial lives

ROBERT WHITE

Two centuries after the American Indians of which there are about 1.5 million in the U.S. today—own 2 percent of the land in the lower 48 states and 10 percent of Alaska. Many tribes have substantial additional assets—and the Department of the Interior's Bureau of Indian Affairs manages about $5.7 billion of Indian cash from legal settlements and the lease of mineral rights. Yet despite these riches—a heartbreaking percentage of Native Americans remain underemployed, undereducated, and impoverished. They may be wealthy on paper, but without the means to translate this endowment into better lives, the Indians have remained America's internal evils.

Robert White '__ is [illegible] of *[illegible]*.

But things are changing, thanks in large part to Tom Tureen '66 and Daniel Zilkha '64, the founders of Tribal Assets Management (TAM), an investment bank based in Portland, Maine. Over the past few years, TAM has helped scores of Indian tribes take charge of their finances and invest in businesses that provide them with high returns, employment, and access to the mainstream economy, services denied them.

TAM's roster of tribal deals ranges from the 1985 purchase for $23.5 million of Simpson Electric, a manufacturer of electronics test equipment, by a Wisconsin band of Chippewa Indians, to last fall's $29 million leveraged buyout, using junk bonds of Carolina Mirror, the largest mirror company in the U.S., by the eastern band of North Carolina Cherokees.

Our job," says Tureen, "is to give tribes access to capital and credit markets. Indians have been shut out from these avenues of economic development for years, in part because of prejudice and in part because of the enormous legal complexities of dealing with the Indians."

Tureen understands those complexities. He and a small team of fellow lawyers took on the state and federal governments on behalf of the Maine tribes in one of the most protracted, hard-fought, and significant legal cases of this generation. It dragged on more than ten years, but they won, and today the Passamaquoddy and Penobscot Indians control some 260,000 acres of Maine land and $130 million in investments—the largest private portfolio in the state.

Standing about 5'6", resolute and vigorous, Tureen seems to have been born with the confidence essential to his David vs. Goliath role. "There is nothing remotely resemblance a Hamlet in him," says Jim Mcnutt '66, who roomed with Tureen in

The lawyer: "nothing remotely resembling a Hamlet"

their junior year. "He just never seems to have a moment of self-doubt."

Perhaps Tureen developed his penchant for long-shots as a means of testing his self-assurance. There was, for example, the time he boasted to a friend while they watched a rehearsal of the Sarah Lawrence chorus that he would "marry that girl in the red sweater in the second row"—though he had no idea who she was. He discovered that her name was Susan Albright, called her up, and asked her down to Princeton for a date. Three years later they were married.

Tureen spent his first two years at Princeton pursuing literature with the same determination. He joined the then mildly artsy Colonial Club, edited the *Nassau Lit*, and earned a reputation as a poet. He was also something of an entrepreneur, running a no-frills crash pad in Vermont called the Tabard Inn, used by students on ski trips.

But everything changed during the summer after his sophomore year. He worked at a government boarding school in South Dakota, where Sioux Indian children were isolated from "adverse family situations" for the off-school months. In its lumbering efforts to do well by the Indians, the government had turned itself into a children's jailer. While the majority of concerned non-Indian citizens concentrated their efforts on programs to combat illiteracy and substance abuse, Tureen saw that the underlying source of these problems was the relationship between the Indians and the United States. He was convinced that this warped relationship, in which Indians were seen—and in many cases had come to see themselves—as dependent on the government for everything, was the root of such indignities as that grisly summer camp.

"That summer turned him around," says Lanny Jones '66, another Princeton roommate, who grew up with Tureen in St. Louis. "I've always known Tom to be an intent, go-get-'em guy, and from then on, all of his energy was directed toward Indian issues." Abandoning poetry, Tureen set his sights on a legal education as the best means of attacking the Indians' underlying problems.

> "Our job is to give tribes access to capital and credit markets. Indians have been shut off from these avenues of economic development for years."

IN THE SUMMER OF 1967, after his first year of law school at George Washington University, he and Susan went to work for the Passamaquoddy Indians in Eastport, a small coastal town at the northeastern tip of the Maine coast. Tureen did research for Don Gellers, a brash, eccentric lawyer who was suing the state on behalf of the Passamaquoddies for 6,000 acres of land that had been unlawfully taken from them in the 1800s.

"It was a strange and wonderful summer," recalls Tureen, "the most bizarre summer I ever spent. There were 40 days of unbroken fog, and the apple blossoms came out on the fourth of July." In addition to the Passamaquoddy, who were concentrated in two small reservations nearby, Eastport's citizens included the hearty, Down East locals—fishermen, loggers, welfare recipients—and a community of back-to-the-land artists and writers ("from away," as the locals described them) surrounding Gellers, many of whom camped out in his house.

As Gellers's legal assistant, Tureen was paid $45 a week by the Law Students' Civil Rights Counsel. Susan worked in the local woolen mill. She came home every evening covered with a different color of lint thrown off from the spinning machines. The seaside cottage they rented looked out across the Canadian border to FDR's former summer retreat on the island of Campobello. At five dollars a month, the cottage was overpriced. "The plumbing consisted of a pipe that came in, a spigot that emptied into a sink, and a drainpipe that went back out the wall," recalls Tureen. Fortunately, the house was located on a large headland with several hundred acres of natural "facilities." In spite of these rusticities, they both fell in love with the place and formed some close friendships, with Indians and with whites.

Gellers's suit was the first attempt to remedy two centuries of raw deals for all the Maine tribes. After some 11,000 years on their own, the Indians had treated their new colonial neighbors with remarkable cordiality. They even fought on the side of the Yankees during the Revolutionary War, only to have their efforts rewarded with the appropriation of all but the ragged edges of their aboriginal territories. In 1794, a treaty with Massachusetts (of which Maine was then a portion) left the Passamaquoddies with Pleasant Point (a 100-acre coastline adjacent to Keyport), a few small islands, and a 23,000-acre township 50 miles inland. The Indians were gradually stripped of their dignity as well. As late as the 1960s, Passamaquoddy school children were punished for speaking their own language, while the Maliseets, a small band of 450 Indians in Houlton, Maine, watched their houses demolished by the town's bulldozers whenever they couldn't afford to pay property taxes.

"Considering how much they'd been

kicked around, the Indians were remarkably open," says Tureen. "I don't remember going through a period of testing before they accepted and trusted me." When Tureen passed the bar in 1969, the Passamaquoddy governor, John Stevens, asked him to come back to Keyport. The tribe needed a new lawyer. Gellers, arrested on possession of marijuana and sentenced to jail, had fled the country.

Tureen agreed to pick up where Gellers had left off and set up shop in nearby Calais, Maine, with funding from Pine Tree Legal Services, an organization funded by the Office of Economic Development. Gellers had based the Passamaquoddies case on a relatively minor land grab, but Tureen opted for an entirely new approach. Hunting further back in legal history, he came across a 1790 law, the Indian Nonintercourse Act, which was meant to protect Indian land by decreeing that all purchases of tribal property be approved by Congress.

"The law was uniformly applied in the West, where the federal government dealt with the Indians before the states were created," says Tureen. "But in the original colonies, where the state and federal governments had been created simultaneously, the states were much less willing to acknowledge federal authority. Tribes which had been hostile during the Revolution were watched closely by the federal government after the war and, by and large, were dealt with through federal treaties in accordance with the Nonintercourse Act. Tribes which had been friendly and were not considered a threat were often left to their own devices and more often than not lost their land in one-sided state treaties. As the years passed, those treaties became the unquestioned law of the land."

Tureen discovered that there was simply nothing in the historical record to show that the state treaties were legal. Slowly, it dawned on him that the case the Passamaquoddies should pursue was the biggest one they could possibly undertake: they should seek to prove that the state had violated the Nonintercourse Act, and thereby lay claim to everything that had been theirs before the white man's arrival.

As if that weren't enough of a challenge, Tureen decided that their only hope was to convince the federal government itself to take the Indians' side, which he knew it would do only if forced to. As he told Jones during a visit to Princeton in 1971, "I have this great idea. I'm going to get the court to force the government to sue Maine on behalf of the Indians!" Jones remembers wondering whether Tureen was getting a little quixotic about the whole thing. "It was a long shot, no question," recollects Tureen. "The entire thing started out as something not very real to anybody but us."

CHRISTOPHER HIRES

Tureen in TAM conference room: "This is not charity work"

But if Tureen was more optimistic than anybody else, he had no intention of fighting unarmed. He set about building a powerful and talented base of support. In addition to securing the services of a brilliant young attorney named Barry Margolin, Tureen went to the august Washington law firm of Hogan & Hartson for *pro bono* counsel. He also freed himself from a potential conflict of interest by leaving Pine Tree's federally funded payroll and taking a salary from the Native American Rights Fund (NARF), a private foundation in Philadelphia, which also agreed to pay Margolin and a couple of additional lawyers to complete Tureen's band of legal guerrillas. (Tureen was the first lawyer to undertake such a claim without demanding a cut of the ultimate award.)

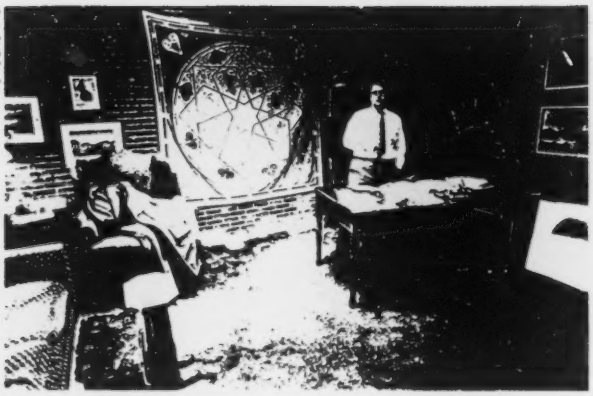
> "Tureen's suits claimed a staggering 12.5 million acres of land, almost two thirds of the State of Maine, plus damages amounting to $25 billion."

THUS BEGAN a decade-long struggle of ground-breaking litigation. The team worked in an office above an outlet for the local Hathaway shirt factory. "Tom never paid more than three dollars for a shirt," says Susan. Which is just as well, since his NARF salary was adequate only by Down East standards. In the winter, the lawyers would store their typewriters in the bathroom—the only part of the office they could afford to heat at night—to keep the ribbons from contracting and stalling the machines the next morning.

There were some compensations, however, including access to a full federal library and the services of a bush pilot who flew them to various tribes and courts along the New England seaboard. The pilot complained about Tureen's hours (frequently 5 a.m. to midnight), so Tureen had him give lessons as they flew. Tureen got his own license and instrument rating, and eventually bought the plane from the pilot. He still flies himself to business calls in the Northeast.

In their first major court battle, the Calais team prevailed over the Interior Department—which tried to kill the case by stalling until the time limit for such suits expired—and forced the federal government to admit that the Nonintercourse Act applied to the Passamaquoddy. This established a landmark legal precedent in favor of the Indians, who for the first time began receiving benefits due federally recognized tribes. Meanwhile, the Penobscot Indians, who in 1796 had traded some five million acres for groceries, ammunition, and a cramped reservation on an island in the river north of Bangor, got wind of the Passamaquoddies' victory and asked Tureen to file suit for them as well.

Together the suits claimed a staggering 12.5 million acres of land, almost two thirds of the State of Maine, plus damages amounting to $25 billion. Tureen fully expected to settle out of court since he couldn't imagine any politician running the risk of losing the whole show in litigation



Zilkha in TAM office: cosmopolitan entrepreneur

and didn't see the wisdom of an all-or-nothing showdown for the tribes either. But the state officials refused to take the claims seriously and treated the court's decision as something of a joke, until a Boston law firm specializing in municipal finances refused to certify the sale of bonds for towns within the contested areas.

The ensuing collapse of the Maine bond market in 1976 and the threat of real inconvenience—unbuilt bridges, unrepaired roads, and schools in need of refurbishing—woke up the state's non-Indian population, and things got nasty. Barely hidden animosities surfaced. Indian children were hounded by their schoolmates. Virulently anti-Indian politicians, including then Governor James Longley and his attorney general, Joseph Brennan (who would succeed Longley in 1979), fed public fears with harrowing visions of homeowners put out in the cold, even though the Indians had stated repeatedly that they would take no such actions.

The animosity got so bad that at one point Tureen took to carrying a gun. His father hinted that it might be a good idea for him to think about a less precarious job. But Tureen's response to these tribulations was predictable. Asked if he ever felt discouraged, he answers, "Nope." For example, when Longley got the Maine congressional delegation to introduce legislation that would have retroactively repealed the Nonintercourse Act, Tureen simply called up Archibald Cox, who didn't know him from Adam and who, fresh from his job as Watergate special prosecutor, was being courted by every worthy cause in America. Tureen reached Cox in his new post at Harvard Law School early one morning, before the secretaries arrived to screen his calls, and talked him into supporting the Indian claim to a fair hearing.

Tureen also managed to get his case into the national news. Reporters from news organizations as diverse as the *MacNeil Lehrer* show and *People* magazine made the pilgrimage to Calais. He discovered that "reality has very little to do with the way people think. Perception is everything. We learned some very important lessons about the media. Our goal was to make people on a national level perceive this as an important issue, one deserving federal attention."

> "The tribes divided the settlement funds roughly in thirds: for land purchases, annual income provision, and business investments."

It worked. In 1977, the Carter White House got into the act, proposing that since the federal government had in essence created the problem by failing to enforce the Nonintercourse Act nearly 200 years earlier, it should bear the cost of settlement. After three more years, several near defeats, and a number of timely kick-saves, the Maine legislature accepted a revision of the Administration proposal, which Congress signed into law in October 1980. The result: $80.6 million split between the Passamaquoddies and the Penobscots, a portion of which was to create a 300,000-acre land base for the tribes, plus full federal recognition and benefits, and an additional $900,000 land fund for the Maliseets.

The Passamaquoddy and Penobscot tribal leaders were now faced with the task of putting their new wealth to good use. Proceeds from a number of previous land-claim settlements in other states had been distributed as cash payments to unprepared tribal members, who had ended their resulting spending sprees no better off than before. The Maine tribes were determined to make their money work to their long-term advantage, and they came back to Tureen for advice.

Although he had no formal financial training, Tureen wasn't intimidated by the idea of handling investment decisions. Jones believes that Tureen is a natural entrepreneur. "Initially he chose to ignore these instincts, to the good fortune of thousands of people, but eventually they surfaced anyway." The tribes agreed to divide the settlement funds roughly in thirds: one toward land purchases, another held in liquid assets producing an annual income for each tribal member, and the last for investments in businesses that would help them prosper.

In 1978, Tureen moved south to the rapidly gentrifying Maine metropolis of Portland and began setting up offices befitting a serious investor. He wanted to furnish them with antiques and was advised to contact Daniel Zilkha '64, publisher of *Art & Auction* magazine. Zilkha invited the Tureens to New York for a poke around the galleries and auction houses. It was the beginning of a strong friendship between wildly different types. Tureen, a Mid-Western preppie gone "legal aid," is ardent and direct. Zilkha, a native of Egypt raised in France, living in the U.S. as a resident alien, is composed and diplomatic.

Born into a venerable Jewish family whose members have been bankers in the Middle East for several generations, Zilkha attended a Swiss boarding school and then a Paris *lycée* for six years before going to Princeton. He sailed to New York on the Italian passport that he still carries. (The Italians granted citizenship to many Jews during the first upheavals in Arab countries after World War II. He retains his Italian citizenship—and his green card—although his wife and children are "totally American.") Zilkha recalls his eagerness to get to the States. "In the 1950s, we Europeans all wanted to be American. I was so excited that I stayed on deck all night to see the Statue of Liberty as we sailed into New York in the early morning."

He wasn't disappointed. He found his fellow students at Princeton to be enormously congenial and his European prepara-

tion placed him out of so many freshman requirements that, mild language problems notwithstanding (he'd learned English after French and Arabic), he became a sophomore by Christmas of his freshman year and chose to major in civil engineering that spring.

He spent his first year out of Princeton as a management trainee with a British department store chain before signing on to another training program with a London investment bank. From there he went to Canada and worked for Alliance Credit, a rags-to-riches-to-rags company that he joined at its peak and watched slide part of the way into bankruptcy. He started out in its lending department and then was sent on the road as a collector, instructed to threaten financially strapped borrowers with repossession. He lasted one and a half weeks, then packed his car and drove to New York to become a trainee at the investment house of Bear Stearns & Co. "By this time," says Zilkha, "I had had so many 'trainee' jobs that American Express turned down my application for a card on the grounds of 'job instability.' "

Eventually he went to Harvard Business School and then tried working for another New York investment firm. In 1970 he married Franny Rogers, who had been a year ahead of Susan Tureen at Sarah Lawrence. When his visa ran out, the couple moved to London, where Zilkha joined a branch of his father's bank. Before long, he and his brother Elie ['61] founded Sodetic S.A., a Geneva-based investment bank that financed exports to Third World and Iron Curtain countries and syndicated private placements in Swiss francs for multinational borrowers. In 1974 they joined forces with Peter Leslie '61, Elie's former roommate, in New York, and Daniel went back to America to work with him. But by 1978 the Geneva operation had grown to be one of the major investment banks in Switzerland, and he had to choose between living in Switzerland or leaving the bank.

"We had two children by then and were in no mood to move. And I had an idea. I realized that there was no magazine in America that dealt with the auction market of antiques and art." Zilkha assumed that it would become increasingly popular with private buyers and that he could provide them with the same kind of inside information that the "trade" enjoyed. "Franny and I started thinking about a format that would give a calendar of upcoming auctions, analyses of and prices realized at past sales, and previews of forthcoming ones, and then we decided to give it a try."

Their partner, Paul Saurel '64, put Zilkha in touch with Whitney Ellsworth, the publisher of the *New York Review of Books*. Zilkha sat in Ellsworth's office and watched him work. He then took out space in the same building and put together the first issue of *Art & Auction* as a black-and-white offset newsletter. Its publication coincided with the Sonnenberg auction at Sotheby's, the first American auction to attract national media coverage.

Within four years the magazine was a four-color glossy with loads of advertising and a circulation of 17,000. And by then *Art & Auction* was held in high esteem by the dealers who had vowed never to support it. "It was great," recalls Zilkha.

CHRISTOPHER JAMES

The deal-maker: settled in for the long haul

> "All of a sudden, we realized that we had found a way for tribes to reach the outside world and put themselves on a larger economic map."

"Franny and I were able to work together and our job was to hang around galleries and auction houses all day. But after a magazine has 'made it,' the actual publishing of it can get boring."

That was late 1982, when the Tureens came to New York on their antique hunt. "I learned a lot about the Maine Indians during their visit, and Tom told me that he'd been to a number of investment banks, all of whom were interested in managing the money but not in putting the specific needs of the tribes high on their priority lists. Tom was coming to the conclusion that the Indians needed an investment bank dedicated to the management of their own affairs."

TUREEN spotted their first target early in 1983: a cement plant in the town of Thomaston, the only one in New England, which had been abandoned by its parent, Martin Marietta, as unprofitable. The Zilkhas were near Portland in Prout's Neck the following summer, and Daniel took to coming to Tureen's office and helped him put together a deal that landed the tribe a bank loan to buy the cement company using the plant's assets as collateral.

The management of the company, now called Dragon Products, reports to the Passamaquoddy tribe. Originally purchased for $25 million (all but $2 million of which was borrowed), the plant and its various outlets around the state are worth close to $50 million today, a success story that has become a Harvard Business School case study. Dragon has paid off in good will as well as profits. As Thomaston's largest employer, it foots 40 percent of the town's tax bill. And in addition to saving about 100 jobs among the local non-Indian population, the Passamaquoddies have also managed to do a favor for their old reluctant partner, the federal government, by eliminating the pollution previously generated by the plant and exceeding the stringent standards of the Clean Air Act.

"All of a sudden" says Zilkha, "we realized that we had found a way for tribes to reach the outside world and put themselves on a larger economic map. We decided to go into business together, and on November 1, 1983, we created Tribal

(Continued on page 33)

Indian Assets

(Continued from page 24)

Assets Management. I started spending three days a week up here, then four, and Franny pointed out to me how absurd this commuting was, so we moved up here. I sold half the magazine in June of '84 and the other half in February '85."

So the Zilkhas settled down with their four children in an old house on Portland's Western Promenade. Though the move seems almost Siberial after Paris, Geneva, and New York, Zilkha loves Portland and seems, for the first time, to have settled in for the long haul. Tureen, who couldn't quite leave the country behind, lives on a 150-acre farm in Parsons Field, a rural hamlet 45 minutes from the Portland International Jetport.

TAM's offices in downtown Portland are done in appropriately businesslike shades of brown and newly exposed and restored red brick, and Zilkha appears to have succeeded in hauling the civilized accouterments of New York and most of Europe with him. The wall beside his desk is covered with a tapestry sewn by his mother replicating Picasso's *Interior with a Girl Drawing*. There are several hand-colored 19th-century French prints, an arresting contemporary Egyptian quilt, two Thai statues, one of which now sports a set of Mideastern worry beads in its hand. One of two glass-fronted Edwardian cabinets is crammed with stock reports and light bulbs, the other, containing a copy of Bullfinch's *Mythology*, stands in a corner next to an end table strewn with Sotheby's catalogs. The other table, built by a Santa Fe artist, rests on a pair of bluejean- and cowboy-boot-clad legs cut off at the knee. Zilkha's Loden coat and a new fur hat from Canton lie on a rosewood Victorian sofa.

The phone rings every four minutes, and, depending upon the caller, Zilkha speaks in English, French, or Italian. He lights a pipe and exhales several cubic yards of smoke. "We started off thinking that we would be dealing with Maine and Connecticut tribes, but the Dragon deal drove us into the national market, and now we represent tribes all over the country, with some 30 deals in-house at any given time." Zilkha usually generates the deals and spends most of his time looking for them. He also makes most of the bank contacts.

Tureen's office is adorned with tokens from his clients and mementos of his work on their behalf. Two landscapes share the walls with a photograph of Tureen and Carter shaking hands over a draft of the White House proposal in 1976, original Oliphant and MacNelly cartoons about the land claim, and copies of the fateful House and Senate bills that settled it once and for all. Above shelves crammed with law books behind Tureen's desk are a Penobscot war club and two Passamaquoddy baskets. The conference room next door sports a 19th-century Navajo blanket and photographs of tribal leaders going back several generations.

In his tweeds and suspenders Tureen looks much more like a country lawyer than an investment banker. The gray lights in his hair age him only slightly beyond the boyish figure depicted in the newspapers of the '70s. The pungent odor of an omnipresent cigar scents the room as he discusses the firm's current *modus operandi*. "Our approach has been to develop a variety of financing techniques, solve legal problems, create credibility, and provide opportunities to get our clients into the mainstream economy. We emphasize regional investments, which link the tribes to their neighboring economies and create wealth to finance on-reservation activities. It's slower than make-work programs, but it's much more secure for our clients in the long run."

> "We emphasize regional investments, which link tribes to their neighboring economies and create wealth to finance on-reservation activities."

Tureen is quick to emphasize that this is not charity work. "We won the land-claim suit because we were right, not because people felt sorry for Indians, and people do business with us because it makes financial sense." Indeed, the business is highly lucrative. TAM bills standard investment banking fees, except for the Passamaquoddies and the Penobscots, who pay in accordance with returns on their investments. Tureen negotiates the deals and the financing. He claims to have learned how to strike hard bargains during all those years of court battles, but those who know him well insist it's a natural talent. David Crosby, another Calais veteran, once said, "Tom Tureen could talk a hungry dog off a meat wagon."

Margolin, who has remained with Tureen since the Calais days, unlocks the legal obstacles and identifies advantages. The two are partners in a law firm, located upstairs from TAM, which specializes in Indian financial transactions. TAM's investments have substantially increased the net worth of the two Maine tribes. They have become one of the state's major employers and have cut their own unemployment levels as well. The Passamaquoddies and Penobscots, once objects of disregard and scorn, are now hailed as solid citizens.

THERE ARE about 2,400 members of the Passamaquoddy tribe in Pleasant Point and Indian Township, and they are collectively worth some $80 million. In addition to Dragon Cement and 115,000 acres of land, they own the Northeastern Blueberry Company—the nation's third largest commercial wild blueberry farm—Rockland radio stations WRKD-AM and WMCM-FM, a supermarket, a mall, and a dairy. They have just established Passamaquoddy Homes, Inc., a joint venture with the largest manufacturer of housing in Finland. (Passamaquoddy Homes will be the first prefabricated home builder in the U.S. to use Scandanavian technology.) This winter, Bloomingdales is featuring the Passamaquoddies' newest venture, a national line of prepackaged goods known as Native American Foods.

The 1,800 Penobscots on Indian Island now own about 150,000 acres of Maine land. Shape Inc., a manufacturer of high quality audiocassettes, has a factory operating on the reservation that has helped cut the tribe's unemployment from over 50 percent (the average for Indians nationally) to under 10 percent. A pending expansion of the firm should further reduce that level. The Penobscots also own and operate a skating rink, which serves Indian and non-Indian children from all over Maine; a piece of a high-stakes bingo game run by the Pequot tribe in Connecticut; and Penobscot Guaranty, a credit enhancement firm for emerging Maine businesses.

Tureen sees Tribal Assets' efforts on behalf of Indians in Maine and elsewhere as not significantly different from the work he and his colleagues did on the land claims. "Both are aimed at helping our clients regain a position of importance and independence. The major difference is that only a handful of tribes could assert land claims but most can own companies if they can access capital."

They are also similar in that neither gets accomplished overnight. And even when the jobs are created, the legacy left by generations of dependence does not disappear immediately. But as John Stevens, the father of the Maine land claims and longtime governor of the Passamaquoddy reservation at Indian Township, says, "The most important thing that has come out of all of this is hope. Now we have a future, not just a past." □

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TELEPHONE (808) 524-1616
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1987 APR 23 PM 3:34

April 17, 1987

Re: S. 721

Honorable Daniel K. Inouye
United States Senator
300 Ala Moana Blvd., Room 7325
Honolulu, Hawaii 96813

Dear Senator Inouye,

Your sponsorship of the Indian Bank Bill to establish the Indian Development Finance Corporation is a very encouraging solution.

In 1985 and 1986 I personally observed the poor living conditions on the Crow and Cheyenne Indian Reservations. Lack of ambition, incentive and financing has depressed both the development of valid entrepreneural endeavors by American Indians and has fueled their unhealthy state of mind and poor living conditions.

I wish you success in your endeavor to pass this bill. Because of my personal interest in this subject I would like to volunteer my assistance on this project should you need it.

Very truly yours,

William J. Eggers, III
Attorney at Law
A Law Corporation

William J. Eggers, III

WJE:clk

Calista Corporation
516 Denali Street, Anchorage, Alaska 99501 (907) 279-5516

April 20, 1987

Office of the President

The Honorable Daniel K. Inouye
Chairman, Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Senator Inouye:

The intent of this letter is to respond to the bill that you have recently introduced, S. 721, entitled the Indian Development Finance Act.

On behalf of Calista Corporation, an Alaska Native corporation formed pursuant to the terms of the Alaska Native Claims Settlement Act (ANCSA), I wish to take this opportunity to advise you that we are in total support of the intended purpose of this bill.

For too long has the present administration and past administrations talked about creating economic self sufficiency for Alaska Natives and American Indians. Yet all of that to date has been mostly rhetoric. It appears that the intent of your bill is to create something concrete that Alaska Natives and American Indians can put their hands on when we are seeking assistance in the area of economic development.

Realizing that it might be against President Reagan's policy to ask for greater capitalization as allowed in your bill, we ask that you consider doubling the $50 million capitalization to $100 million. The rationale behind that is that when American Indians and Alaska Natives realize that there is in fact a bill designed to provide them with economic assistance in start-up of businesses, etc., you will probably find that the demand will be greater than for the $50 million.

It is also our hope that the agencies administering implementation of the bill, assuming this bill becomes law, will not become so large that the original intent of the bill will be defeated.

For your information, Calista Corporation is a product of the Alaska Native Claims Settlement Act. If my memory serves me right, you were supportive of ANCSA.

Please include this letter as part of the legislative history of S. 721.

Thank you for your continued interest in the well being of the Alaska Natives and American Indians.

Sincerely,

CALISTA CORPORATION

Nelson N. Angapak
President

TELEPHONE (602) 248-0184

THE INDIAN DEVELOPMENT DISTRICT of ARIZONA

1777 WEST CAMELBACK ROAD SUITE A-108 PHOENIX, ARIZONA 85015

April 20, 1987

The Honorable Daniel K. Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Senator Inouye:

The enactment of Senate Bill 721 introduced in the 100th Congress would be a major step toward eliminating poverty on Indian reservations. The Bill fills a gap in Indian reservation infrastructure necessary for an effective economy. Passage of Senate Bill 721 will provide an economic engine to power attainment of economic self-sufficiency for Indian people.

Although the Bill wisely allows the Corporation to guarantee loans made by state or federally chartered lending institutions, we believe that the potential effectiveness of the provision is diminished by the language on Page 10, paragraph B: "...such loans were made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation."

Private lenders commit their resources with a view toward maximizing returns on investment and risk assessment. Social concerns, although at times influential, are of lesser significance in evaluation of a loan committment. Federal guaranty programs such as those furnished by the BIA, SBA, etc. have not produced a widespread stampede by the lending industry to become involved in reservation loans. Quite often the issue between the lender and the government agency involves the market rate of interest. If private lenders are to become involved in a substantial way in the development of Indian economies, the normal profit expectation must be present.

Among the many benefits provided by the Bill is that the Corporation will derive income from issuing its guaranty. Although necessary and desirable, the guaranty adds to the lending institution's cost which further diminishes its return. It should be Congress' goal to maximize particpation by institutional lenders in addition to the creation of a specialized financial institution - the Corporation. Therefore, elimination of the above-quoted language in the Bill will have positive impacts on the development of Indian communities.

Instead, allow the Corporation the flexibility to determine under what circumstances it should provide its guaranty. If in its judgement the lenders interest charge exceeds market rates or would impose an undue burden on the borrower, they will refrain from providing the guaranty. To impose the requirement that the guaranty can only be available to loans made primarily for social purposes would limit the Corporation in its income potential to be derived from its guaranty and have slight value in encouraging greater participation by traditional lenders in reservation projects. If a project is significant to the development of the reservation economy, the lack of an available subsidized loan rate should not work to bar its happening.

On page 11, paragraph (6), line 15, we suggest that the language "...for an amount equal to the balance of the principal and interest accrued..." be change to: "...for an amount not to exceed the balance..." This minor change would make explicit a meaning we feel is presently implied.

On page 12, line 14, we do not appreciate the reason for the inclusion of the word "political". Possibly it is used in a sense needed to amplify the meaning of the term "legal condition" or it may refer to an assessment of political stability as an element of risk assessment. In any event, since "politics" has often been a negative factor in reservation development, the word conjures up abuses and may not be as effective as some other term or expression in conveying the intential meaning.

Indian people are often denied access to benefits provided to other citizens because of the perception that the existence of the Bureau of Indian Affairs provides the sole source of their entitlement. Therefore, we suggest inclusion of a provision that the enactment of this Bill into law will in no way replace or diminish their rights to benefits provided by government agencies to all citizens of the United States.

While Senate Bill 721 is undeniably a landmark effort to strike at the root causes of Indian poverty, we would like to call to your attention to another area of concern that should also receive attention: the historical ineffective investment of Indian resources which has denied to Indian people the potential of economic growth of capital resources. The United States as trustee continues to invest Indian funds under investment limitations that most trustees have long since abandoned as ineffective and detrimental to the welfare of their beneficiaries. One has only to examine the investment portfolios of college endowment funds, private trusts, pension funds, etc., to recognize that the trustees have generally recognized that their responsibility goes beyond mere preservation of capital and includes the duty to protect buying power and even enhance the value of the principal. After decades of observing the impacts of inflation, the United States, as trustees has not recognized that the investment policies prescribed by federal law are working to maintain a status of Indian poverty. It may be that Assistant Secretary Swimmer's recent attempt to provide a more efficient method of handling Indian monies by utilizing private banking services is a beginning toward improving management. However, the greater detriment is in the archaic perception of trust responsibilites which presently guide the investment of Indian resources. If Indian wealth had been properly invested during the past fifty years, we likely would not currently be faced with the need to address the problem of extreme poverty.
We thank you for your leadership in offering a substantial remedy to the problems impacting Indian country.

Sincerely,

Grace McCullah

Grace McCullah
Executive Director

TELEPHONE (602) 248-0184

THE INDIAN DEVELOPMENT DISTRICT of ARIZONA
1777 WEST CAMELBACK ROAD SUITE A-106 PHOENIX, ARIZONA 85015

April 28, 1987

Honorable Daniel K. Inouye, Chairman
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Senator Inouye;

In my interest in the passage of Senate Bill 721 stems from my former employment as Indian Affairs Officer and Vice President of the Valley National Bank of Arizona. During the approximately eighteen years I worked with Indian communities I had ample opportunities to experience the difficulties associated with obtaining loan funds for projects on reservations.

During the time I was employed the bank took some innovative steps in providing financing for a large tribal forming enterprise on Gila River and long term financing for a grocery-supermarket building on the Hopi reservation. Although, there were additional numerous loans to individual Indian enterprises, almost all such committments came about through the assistance of special government programs and ambience of public policy social concerns.

With an perceived shift in national focus and deregulation of the banking industry, the social responsibility factor in making loan committments on reservation appeared to become less influential. In any event few loans were made.

Valley National Bank of Arizona was a typical bank in its responsiveness to social concerns. Most lenders did not participate in on reservation financing because of unfamilarity with applicable laws, jurisdictional concerns, trust status of collateral etc.. Further, Indians most often require start up capital and banks are not the usual source for this venture type investment.

Senate Bill 721 will provide a means of filling a gap in the financial infrastructure necessary to Indian reservation development. I urge passage of this needed legislation.

Sincerely,
Paul Klores
Paul Klores, Director
Community Development

THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

May 8, 1987

The Honorable Daniel K. Inouye
Chairman
Senate Committee on Indian Affairs
722 Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to offer the Navajo Nation's initial comments on S.721, the proposed "Indian Development Finance Corporation Act."

As our Economic Development Director, Mr. Al Henderson, testified before your Committee last month, the need to create private-sector jobs on our lands stands as the highest Navajo Nation priority, and I believe this is true of many other Indian tribes across our nation. Historically, many obstacles have stood in the way of this process; undoubtedly, one of them is the absence of an appropriately capitalized development institution to support the formation of individual-Indian-owned enterprises.

Accordingly, I view S.721 as an important piece of tribal economic development legislation and a strong companion bill to S.788, the proposed Indian Economic Development Act introduced by Sen. McCain, which we regard as one of the primary vehicles for offering non-indigenous, already profitable corporations powerful new incentives to come to our Reservation.

As you certainly know, many investors are hesitant to make an initial investment commitment on Indian lands because the climate is somewhat unfamiliar to them; in the commercial context, unfamiliarity per se adds to the wrong side of the risk-reward balance. Therefore, I believe that a critically important addition to your legislation would be a provision which moves to remove, or at least mitigate, the uncertainty factor.

Such a provision could quite properly be modeled after the risk-insurance programs offered by the Overseas Private Investment Corporation (OPIC), a Federally chartered institution created to reduce the uncertainty associated with investments in developing third-world nations (which the U.S. chooses, as a matter of public policy, to encourage). The many similarities between economic conditions in many of these countries and on many of our reservations suggests that an OPIC-model provision would serve a very useful purpose of advancing the policy goals of increased private-sector investment on the reservation. This provision would go beyond the loan-guarantee language of S.721 to insure the investments corporations and entrepreneurs themselves make in businesses on Indian lands.

Post Office Box 308●Window Rock, Navajo Nation (ARIZONA)●(602) 871-4941

The "uncertainty" factor I'm speaking of is both political and commercial. Perhaps the most appropriate form of insurance therefore would be coverage tailored to individual projects covering both "political" and "commercial" uncertainties. In the case of tribal ventures, the difference between these forms of uncertainty is often one of degree. Traditionally, a default caused by bankruptcy is considered "political risk" in the broadest sense if it is the result of mismanagement of the economy by the government; it is "commercial risk" if it is the result of mismanagement by the firm. In the case of tribally owned enterprises, the distinction may become somewhat blurred.

Given this situation, a model which may be worthy of investigation is that of the Foreign Credit Insurance Association (FCIA). This program is sponsored by an association of private insurance companies, in conjunction with the Export-Import Bank of Washington. The FCIA insures U.S. exporters against the risk of nonpayment by foreign purchasers for both commercial and political reasons. It is therefore not insurance on capital investments; nevertheless, it provides a basis for analysis which may be applicable to the American Indian reservation situation.

FCIA covers commercial uncertainties for 90 percent of loss for losses due to buyers' bankruptcy or failure due to insolvency. Political uncertainties are covered for 100 percent of loss. In addition to the types of political uncertainties covered by OPIC's programs, FCIA covers unwarranted license revocations.

In summary, some form of insurance program addressing uncertainties modelled after OPIC and FCIA programs may be appropriate to the reservation situation, but the insurance would need to be more closely tailored to individual projects in the context of the specific reservation environment. A more detailed understanding of the nature of "uncertainty" -- both perceived and substantive -- is needed to accomplish this. The Navajo Nation strongly believes a provision should be added to S.721 that examines the OPIC and EXIM Bank -- FCIA models along with private insurance programs, to determine how effectively some form of insurance coverage might enhance reservation business development through the reduction of political and commercial uncertainty. We suggest a study be done to test these programs' applicability to Indian Lands.

Investment Promotion

The role of perceptions of investment uncertainties has been discussed at length. One of the more cost-effective approaches used by the U.S. government to reduce these perceptions in LDC's is the sponsorship of investment promotion and information programs, such as those of OPIC, the Agency for International Development and other agencies.

Investment missions are an important element of OPIC's overall mandate. Under this program, OPIC provides assistance to U.S. investors by affording them the opportunity to visit countries,

examine investment opportunities and gain a general familiarity with their commercial customs. In addition to helping link investors with appropriate opportunities, OPIC establishes itineraries and covers some of the travel costs.

OPIC's investment missions appear to be effective. For example, in 1981 OPIC arranged and led three investment missions to Kenya, Morocco and Papua, New Guinea. As a result of these missions, six letters of interest were exchanged between U.S. companies and local businesspersons, and nine joint venture projects entered active negotiation.

Another investment promotion endeavor carried out by OPIC in 1983 was a nationwide videoconference program entitled "Operation Opportunity." This live teleconference was viewed by an estimated 5,000 U.S. business executives attending the program simultaneously in 44 cities around the country. The conference provided opportunity for business and government leaders to discuss programs available to U.S. firms seeking overseas business opportunities, to review case studies and to ask questions and offer ideas.

Yet another recently initiated program sponsored by OPIC is the development of an Opportunity Bank to help link investors interested in foreign investments with projects put together by LDC's. The Opportunity Bank's computerized data base contains two major categories of information: profiles of foreign projects where U.S. investment is sought, and profiles of U.S. companies interested in undertaking specific types of overseas ventures. By registering with the Opportunity Bank, domestic firms and foreign project sponsors can request "matches" of their respective investment interests and requirements. The Department of Commerce has a similar data bank for U.S. export opportunities.

These investment promotion projects demonstrate the U.S. government's recognition of the important role that communications and information play in breaking through perceptions of uncertainty blocking U.S. private direct investment in LDC's. It is quite possible that sponsorship of analogous programs for Indian reservations may be equally valuable.

Let me thank you for this opportunity to comment on S.721. We look forward to working long and hard with you and your Committee colleagues and staff to enact an economic development legislative package which will truly promote self-sustaining, job-generating private-sector development at Navajo and across Indian country.

Sincerely,

PETER MacDONALD
Chairman
The Navajo Nation

M&F
Miner and Fraser & Public Affairs, Inc.

May 11, 1987

Mr. Alan Parker
Staff Director
Senate Select Committee of Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Alan:

Enclosed are the **Navajo Nation's initial comments on S.721**, the proposed Indian Development Finance Corporation Act.

I believe that the proposal of reducing the uncertainty of investment on Indian lands described in the attached letter would be a significant addition to the proposed Development Finance Corporation.

There are two additional ideas that would also increase the effectiveness and efficiency of the proposed corporation.

1) Regional Offices -

Section 103(12) states that the corporation has the power "to establish one or more regional office, as may from time to time be authorized by the Board of Directors in order to more efficiently serve the widely disbursed Indian population."

The Navajo Nation believes that the proposed statute must include a regional entity in the Southwest as approximately 50% of all Indians in the U.S. live there. Such decentralization also serves potential clients better as those familiar with that area of the U.S. will be better able to assess the validity of potential enterprise.

2) Reviewing Loan Application -

The Navajo Nation also believes that all proposals must be acted on within 60 days. Businesses and entrepreneurs cannot afford to stall their growth and development plans while their proposal for financing is being scrutinized. The statute should impose such a requirement to guard against lengthy review procedures.

I hope that these thoughts are valuable to you as the committee considers amending language to S.721. At your convenience, I would like to discuss Navajo proposals with you on S.788 and S.121.

I look forward to hearing from you soon.

Sincerely,

Richard Rosenzweig

cc: Patricia Zell

1025 Connecticut Avenue, N.W. Washington, DC 20036 (202) 223-0030